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1 A. That I know of, yes.

2 Q. No one else on earth has them that you know of?

3 A. That I -- that I know of, yes, that's true.

4 Q. No one at eTrepid Technologies has them that you know  
5 of?

6 A. Correct.

7 Q. So those source codes that you want are a very  
8 distinct set of codes that are required for a very specific and  
9 distinct business purpose in connection with these classified  
10 government contracts?

11 A. Well, not just them. They could be used for a very,  
12 very vast group of different contracts.

13 Q. Mr. Trepp, please.

14 THE COURT: Well --

15 BY MR. FLYNN:

16 Q. That's what they've been used for in the past at  
17 eTrepid; is that correct?

18 A. They've been used for them and other things for  
19 eTrepid in the past, that's correct.

20 Q. Now -- and only Mr. Montgomery, according to you, has  
21 the codes. All of the work that's been -- being done at  
22 eTrepid and all of these doctors and sophisticated programmers  
23 that you've got employed, none of them have it; is that  
24 correct?

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1 A. I do not believe they have anything other than what's  
2 been recovered through our recovery process, and I believe  
3 Mr. Montgomery has it.

4 Q. So we could call him a specialist in these particular  
5 source codes; is that correct?

6 A. I believe there are plenty of people that would have  
7 the ability to understand the analysis, to understand what the  
8 source codes are.

9 Q. But no one has in 30 years; is that correct?

10 A. Well, how would I know that?

11 Q. Do you know of any person, in eTrepid or not, who has  
12 the sophistication, the knowledge in his brain, about how these  
13 source codes work to process the things that Mr. Montgomery was  
14 processing?

15 A. To some degree, absolutely.

16 Q. Who?

17 A. Zehang.

18 Q. Then Zehang could go out tomorrow and do it; is that  
19 correct?

20 A. I did not say that. He has -- I believe what you  
21 asked me was, does he have some knowledge of. And my response  
22 to that is yes. Do I believe other employees have some  
23 knowledge of it? I believe the answer to that is yes. Who  
24 kept it under his wing in his private cubbyhole, not on a

1 source server? That was Mr. Montgomery.

2 Q. Thank you. Who else that you know of, other than  
3 Mr. Montgomery, has the skill in the next year to put all these  
4 source codes together so that these government contract items  
5 can be processed?

6 MR. PEEK: Objection, Your Honor. He's assuming facts  
7 not in evidence that Mr. Montgomery has the skill to actually  
8 write the C++ code or the MET code that's being described here.

9 MR. FLYNN: That's absolutely correct, Your Honor.  
10 It's what he did for two-plus years.

11 MR. PEEK: That's maybe what his testimony is, but  
12 that's not what the testimony is so far.

13 THE COURT: Well, I think -- go ahead and ask the  
14 question, and we'll tie it up if we can.

15 BY MR. FLYNN:

16 Q. Who else has the skills to put the complete package of  
17 source codes together so that these government contracts can be  
18 done, other than Mr. Montgomery?

19 A. I don't know.

20 Q. The instruments and tools that Mr. Montgomery used  
21 while he was at eTrepid, do you know what they are, to do this  
22 government processing?

23 A. Is that a question about hardware, software? I don't  
24 understand the question.

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1 Q. Do you have any idea how he did it, how he would take  
2 things and process them?

3 A. Well, I certainly can tell you what I believe that  
4 he's described to me. I also totally believe now that he's  
5 lied to me.

6 Q. Well, let's just take -- do you have any idea, as you  
7 sit here under oath, how he did it?

8 THE COURT: How he did what?

9 BY MR. FLYNN:

10 Q. How he would process -- see, how he would process  
11 things in connection with these government contracts.

12 A. Just to the extent of what he told me he did.

13 Q. In terms of the source codes, the line coding, the  
14 technology that was used, do you understand it?

15 A. No.

16 Q. And you would agree with me that that was, in effect,  
17 the tool by which these contracts were done?

18 A. I don't think I have the knowledge to be able to  
19 answer that question.

20 Q. Up until the end of 2002, how was Mr. Montgomery  
21 being -- even though he was a founder and principal, how was he  
22 being treated in terms of being paid, as an independent  
23 contractor? How was he being treated?

24 A. There was a period of time where he was being paid, I

26 (Pages 98 to 101)

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1 guess you would call it as an independent contractor, because  
2 he wasn't getting a W-2 from me; he was getting a 1099.

3 And there were various reasons for doing that, one of  
4 which was his attorney said, "Well, this is what Dennis told  
5 me." His accountant had told him that he had tax loss  
6 carry-forwards from prior lawsuits where he had losses in them  
7 and that he didn't need to get the deductions because --  
8 whatever the CPA said.

9 Q. Who was -- do you know when he got K-1s, when he got  
10 1099s? Do you know?

11 A. Well, I know he got -- I know he got -- wait. K-1s --  
12 he'd get a K-1 every year, like every other owner in the  
13 entity, and a 1099. That's not a W-2. I believe that was in  
14 neither the first year -- earlier years because of this tax  
15 thing that he had told me.

16 But he's gotten a W-2 certainly in -- well, to the  
17 best of my knowledge, in '03, '04, and '05. I don't know  
18 about '01 and '02.

19 Q. To bring this to a close, Mr. Trepp, there was no one  
20 at eTreppid who instructed Mr. Montgomery what to do in the  
21 regular course of the fulfillment of his work on these  
22 government contracts; isn't that correct?

23 A. Well, I'm not sure that is correct. I mean, if I told  
24 him to do something relative to the government contract, I

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1 would certainly expect he was going to do it.

2 Q. Well, you don't even know what he was doing or how he  
3 was doing it, do you?

4 A. That's absolutely not true. I certainly knew the end  
5 result. He knew exactly what he was doing. He established the  
6 contract that our company received and we performed on.

7 Q. What you knew -- without getting into content, what  
8 you knew, for example, was if a certain item was processed for  
9 the government, you would know the end result of whether the  
10 information that was given to the government was accurate in  
11 terms of what the government wanted. That's what you knew, and  
12 you were told that by Mr. Montgomery; isn't that correct?

13 A. No.

14 Q. Isn't it true that at a certain time at eTreppid,  
15 there was a certain governmental agency with certain employees  
16 or agents who had nothing to do with you, they only dealt with  
17 Mr. Montgomery?

18 A. That's absolutely ridiculous.

19 Q. Isn't it true that you and Mr. Montgomery had a  
20 discussion about what they told him and that you were not privy  
21 to and he told you that he couldn't tell you?

22 A. No. That's absolutely ridiculous.

23 Q. Do you know, as you sit here today, the end results of  
24 the confirmations of the accuracy of the information that

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1 Mr. Montgomery produced, the dates, the contents, what they  
2 related to, and how often they were confirmed?

3 MR. PEEK: Your Honor, could I have that question  
4 back? I have no idea what was asked.

5 THE COURT: I think there were a lot of questions.

6 MR. FLYNN: I'll try it again, Your Honor.

7 THE COURT: You might want to break it down a little  
8 bit because it's a little confusing to me too.

9 BY MR. FLYNN:

10 Q. When Mr. Montgomery would process information for the  
11 government --

12 A. Uh-huh.

13 Q. -- on one of these government contracts, first, do you  
14 have any records, sir, of the end result of that processing?

15 A. Yes.

16 Q. Just in -- generically, what types of records do you  
17 have?

18 A. I have spreadsheets that he gave me, starting from the  
19 first processing frame we had through the end. I think I have  
20 every record that he ever generated, both in electronic  
21 format, and I certainly have it, reams of it, in paper format.

22 Q. Is this classified information that you claim you  
23 have?

24 A. Is it classified information today? I believe it is

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1 not, although I'd like to check to see if, in fact, it was. I  
2 personally do not believe it is classified today.

3 Q. Let's take one aspect of one contract with the special  
4 agency.

5 A. Uh-huh.

6 Q. In terms of confirmation of Mr. Montgomery's results,  
7 is it your testimony you have eTreppid documents relating to  
8 that confirmation?

9 A. I don't understand the question, Your Honor.

10 Q. Well, you know that eTreppid, under the clearances  
11 that they have, is not entitled to store any classified  
12 information?

13 A. The information that eTreppid had was not classified.  
14 The information -- the outputs of the information of that would  
15 be classified as far as the government is concerned. We never  
16 had that information classified for the simple reason, at the  
17 time we were doing the work, we had no classifications  
18 individually.

19 MR. FLYNN: May I have a moment, Your Honor?

20 THE COURT: Certainly.

21 BY MR. FLYNN:

22 Q. Who currently has the books and records of the  
23 company?

24 A. They're in the building.

27 (Pages 102 to 105)

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1 Q. And who has custody of them? Is there a bookkeeper,  
2 an accountant?

3 A. Yes.

4 Q. Who is the individual?

5 A. We have -- we have a bookkeeper. Her name is  
6 Su Perez. We have a CPA firm, which is Ashley Quinn. I  
7 certainly have access to anything I want whenever I want it.

8 Q. And what books and records are there?

9 A. Whatever we need to do to create our K-1s at the end  
10 of the year, anything relating to tax information. We  
11 certainly have our checkbooks, our deposits, our withdrawals,  
12 our wires, all of the expenses. I mean, to create a tax  
13 return, you have to have everything.

14 Q. Are there any P & Ls?

15 A. Well, we could certainly generate one. I don't know  
16 if the accountant has generated a P & L. Well, he had to have  
17 created a P & L to generate K-1s, so --

18 Q. And they're in the company?

19 A. Well, they're either at the CPA's or at the company  
20 or -- I don't know, frankly, which.

21 Q. How many meetings of the board of directors have taken  
22 place since 1998?

23 MR. PEEK: Your Honor, this doesn't have a board of  
24 directors. This is a limited liability company. It has member

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1 managers.

2 THE COURT: You might want to rephrase that. But I  
3 just have a general question, and that is, I don't understand  
4 the relevance of a lot of these questions, so you could maybe  
5 try to tie that in so that I do.

6 MR. FLYNN: A lot of it has to do with  
7 Mr. Montgomery's testimony.

8 THE COURT: All right. All right.

9 BY MR. FLYNN:

10 Q. Have there ever been any minutes kept of any meetings,  
11 committee meetings, shareholder meetings of eTreppid?

12 MR. PEEK: There aren't shareholders, Your Honor.

13 THE COURT: I understand that. Just simply rephrase  
14 it. This sounds more like discovery than anything else to me,  
15 but go ahead.

16 MR. FLYNN: I'll move on, Your Honor.

17 THE COURT: All right.

18 BY MR. FLYNN:

19 Q. Did you ever discuss with Mr. Montgomery the intrusion  
20 detection software that he had incorporated into certain parts  
21 of the software?

22 MR. PEEK: Objection. Lacks foundation, Your Honor,  
23 that there was such a technology incorporated into the  
24 software. He already asked Sloan if whether there was. We

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1 have Mr. Hennessey's evidence that suggests that there was not.

2 THE COURT: I think he could ask the question did you  
3 ever have a discussion about whether or not there was any  
4 intrusion technology inserted into the software.

5 MR. PEEK: I don't have a problem with that kind of a  
6 question, Your Honor, and it would be a lot easier if he could  
7 just ask it that way.

8 THE COURT: I understand your objection, and if there  
9 were a jury sitting here, I'd sustain it. But I understand  
10 what he's asking, and I'm going to allow it.

11 BY MR. FLYNN:

12 Q. Did you have those discussions?

13 A. No.

14 Q. Never?

15 A. I do not believe it ever existed.

16 Q. Was there ever a discussion between you and  
17 Mr. Montgomery in a heated exchange wherein he told you that if  
18 you or one of your people try to go access anything, the  
19 software will melt down?

20 A. A, I've never had a heated exchange with him, with the  
21 exception of the January 10th exit; and B, absolutely not.

22 MR. FLYNN: That's all I have, Your Honor.

23 THE COURT: All right.

24 ///

///

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# REDIRECT EXAMINATION

3 BY MR. JAKOPIN:

4 Q. One question. Was the source code used for processing  
5 on the eTreppid government contracts developed at eTreppid?

6 A. Absolutely.

7 MR. JAKOPIN: No further questions.

8 MR. FLYNN: I object. Move to strike. Lacks  
9 foundation.

10 THE COURT: Well, let me ask this question: Do you  
11 know whether it was or not?

12 THE WITNESS: Well, I firmly believe all of the source  
13 code at eTreppid was eTreppid's. And if it was eTreppid source  
14 code that operated anything for any customer, I certainly  
15 believe that it was ours and it was used.

16 THE COURT: All right. I understand that that's your  
17 belief, but do you have any actual knowledge about that?

18 THE WITNESS: That there was a source code run to  
19 operate the government equipment?

20 THE COURT: And that it was developed on eTreppid's  
21 equipment.

22 THE WITNESS: Well, I don't see how it could be  
23 developed anyplace else, Your Honor.

24 THE COURT: All right. All right. I understand.

28 (Pages 106 to 109)

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1 MR. FLYNN: That's all I have, Your Honor.  
 2 THE COURT: All right.  
 3 THE WITNESS: Am I done?  
 4 THE COURT: I believe so.  
 5 THE WITNESS: Thank you.  
 6 THE COURT: You can step down.  
 7 (Witness excused.)  
 8 THE COURT: Is that --  
 9 MR. JAKOPIN: That concludes our case, Your Honor.  
 10 THE COURT: All right. Do you have one witness?  
 11 MR. FLYNN: I do, Your Honor. I have one witness. I  
 12 want to make a motion, but I'll reserve on the motion, with the  
 13 Court's permission -- with regard to burden of proof, and I'll  
 14 reserve on the motion.  
 15 THE COURT: All right. Go ahead.  
 16 MR. FLYNN: We would call Mr. Montgomery to the stand.  
 17 MR. PEEK: Your Honor, how late are you going to go?  
 18 THE COURT: Until we're done.  
 19  
 20 DENNIS L. MONTGOMERY,  
 21 called as a witness, having been duly sworn,  
 22 testified as follows:  
 23  
 24 THE COURT: I mean, I should say within reason. But I

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1 can't imagine that we'll be going later than I would be willing  
 2 to go.  
 3 MR. PEEK: Well, I understand that Mr. Flynn said he  
 4 was going to have Mr. Montgomery for 30, 40 minutes. I  
 5 wouldn't anticipate a lengthy, lengthy, lengthy cross.  
 6 THE COURT: I think you're safe.  
 7 MR. PEEK: Okay.  
 8  
 9 DIRECT EXAMINATION  
 10  
 11 BY MR. FLYNN:  
 12 Q. State your name, please, sir.  
 13 A. Dennis L. Montgomery.  
 14 Q. Your age?  
 15 A. Fifty-three.  
 16 Q. Where do you live?  
 17 A. You want the address?  
 18 Q. Just --  
 19 A. Reno, Nevada.  
 20 Q. What's your occupation?  
 21 A. Well, I'm unemployed right now.  
 22 Q. What was your occupation?  
 23 A. Chief technology officer at eTrepid Technologies.  
 24 Q. What's your educational background, Mr. Montgomery?

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1 A. I got a bachelor -- an associate of science in  
 2 cardiopulmonary technology, and I did not complete a bachelor's  
 3 degree in biology.  
 4 Q. And with regard to your career history, what type of  
 5 work have you done since college?  
 6 A. I went to work in a hospital for two years as a  
 7 perfusionist.  
 8 Q. What's a perfusionist?  
 9 A. I'll restate that. I went to work as a  
 10 cardiopulmonary technician in a hospital, and as a  
 11 cardiopulmonary technician, I had duties regarding respiratory  
 12 therapy, EKG, blood gas analysis, so forth. That was from '73  
 13 to '75, I believe. And from '75 to around '80, I worked as a  
 14 consultant on medical equipment and medicine.  
 15 Q. Okay. What is blood gas analysis?  
 16 A. It's a process by which you determine the gas levels  
 17 inside the blood.  
 18 Q. And what specifically was the nature of your work in  
 19 blood gas analysis when you were working at the hospital?  
 20 A. I was developing a series of programs that would allow  
 21 an automated method for calculating blood gas and several other  
 22 parameters.  
 23 Q. At that time, what was your background in computer  
 24 programming?

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1 A. Um, I was just learning it as I was going along.  
 2 Q. And at some point, did you form a company?  
 3 A. Yes, in '81 or '82, called Computermate.  
 4 Q. And what's the business purpose of that company?  
 5 A. To do -- write medical software for medical  
 6 instrumentation.  
 7 Q. And did the company have clients?  
 8 A. Yes.  
 9 Q. Who were the clients?  
 10 A. Coming, Coming Medical, Kodak, DuPont, American  
 11 Hospital, so forth.  
 12 Q. And at some point in connection with your work with  
 13 Coming and Computermate, did Coming enter into a licensing  
 14 agreement with Computermate in connection with spectral  
 15 analysis of blood gasses?  
 16 A. Yes.  
 17 Q. And what was the nature of that agreement?  
 18 MR. PEEK: Your Honor, best evidence is the agreement  
 19 itself.  
 20 THE COURT: Oh, I think he can describe the nature of  
 21 it. This is all background, isn't it?  
 22 MR. FLYNN: Yes, Your Honor, but it's the background  
 23 in regards to --  
 24 MR. PEEK: It's background, Your Honor, related to

29 (Pages 110 to 113)



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1 what the claim is as framed by the opposition of certain  
2 copyrights in this time frame. So that's why I am very  
3 cautious in my objections more than -- it's not just  
4 background. It goes to the substance of their defense that  
5 they own -- there we go (being shown document).

6 THE COURT: I think he's just showed you the document,  
7 has he not?

8 MR. PEEK: I don't believe so. It's an agreement, but  
9 it's certainly the document.

10 BY MR. FLYNN:

11 Q. Mr. Montgomery, does this file basically contain the  
12 agreement on the nature of the work that you were doing for  
13 Coming in connection with blood gas analysis?

14 A. That was the manual that described the software that  
15 was used on the instrumentation.

16 Q. And let me show you several documents that have been  
17 taken out of that manual. And I'd ask you --

18 MR. PEEK: Your Honor, if he's going to offer this so  
19 I can at least examine it --

20 THE COURT: Yeah.

21 BY MR. FLYNN:

22 Q. And I'd just ask you if those pages come out of the  
23 manual.

24 A. Yes.

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1 MR. PEEK: This is Exhibit 19?

2 MR. FLYNN: Exhibit 19.

3 MR. PEEK: Has that even been offered yet?

4 THE CLERK: Hasn't been marked.

5 MR. PEEK: Hasn't been marked?

6 MR. FLYNN: I'm going to offer it.

7 MR. PEEK: You've got to mark it.

8 MR. FLYNN: And then I'm going to offer it.

9 MR. PEEK: Can you mark it first. Is it Exhibit 19?

10 MR. FLYNN: Do you want him to look at it first or --

11 THE COURT: You guys want to have a recess so you can  
12 have a conversation?

13 MR. FLYNN: Do you want to read it first, or do you  
14 want me to mark it?

15 THE COURT: Well, I think it might be up to me. Mark  
16 it, and let's go from there.

17 MR. PEEK: What I ask -- is he going to mark this  
18 document?

19 THE COURT: Yes.

20 MR. PEEK: That's what I didn't know. I thought he  
21 was just going to mark the pages out of it. Do we have a copy  
22 of it so I can have a copy of it?

23 MR. FLYNN: I have a copy of the pages which are  
24 relevant.

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1 THE CLERK: It's Exhibit 19.

2 (Defendant's Exhibit 19 was marked for  
3 identification.)

4 MR. PEEK: Your Honor, respectfully, this is what we  
5 asked for last week. And if he's known about it and he's going  
6 to use it as an exhibit, it's important that I have the entire  
7 document to be able to cross-examine, as opposed to just  
8 limited pages.

9 THE COURT: It appears that you have the document  
10 itself right there in front of you --

11 MR. PEEK: I do.

12 THE COURT: -- and you're holding it --

13 MR. PEEK: I do.

14 THE COURT: -- and he's letting you look at it. And  
15 we'll decide later about getting you a copy.

16 MR. PEEK: I've just now seen it, Your Honor.

17 THE COURT: All right. I understand.

18 MR. FLYNN: Let's mark for identification, first, the  
19 pages that the witness is going to testify about.

20 THE COURT: Mark those 20.

21 MR. FLYNN: 20, Your Honor.

22 (Defendant's Exhibit 20 marked for identification.)

23 MR. FLYNN: And the record will reflect I gave a copy  
24 of those pages to Plaintiff's Counsel.

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1 THE COURT: All right. Let me see the exhibit.

2 MR. FLYNN: While he's looking at that, why don't we  
3 mark the copyrights for identification.

4 THE COURT: How are we going to mark those, 21 through  
5 what?

6 THE CLERK: He just gave me one document.

7 THE COURT: Mark it 21, then.

8 MR. FLYNN: Yeah, just 21, I think.

9 (Defendant's Exhibit 21 was marked for

10 identification.)

11 MR. PEEK: Has this been identified as to what it is?

12 MR. FLYNN: It's just been marked.

13 MR. PEEK: Okay.

14 MR. FLYNN: Tell me when you're ready.

15 MR. PEEK: I'm ready.

16 BY MR. FLYNN:

17 Q. With regard to Exhibit 20, Mr. --

18 A. Is this the manual?

19 Q. Yes, the pages from the manual.

20 A. Yes.

21 Q. Are those, in fact, pages that have been taken out of  
22 Exhibit 19?

23 A. Yes.

24 Q. They're copies thereof?

30 (Pages 114 to 117)

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1 A. Yes.

2 Q. Describe what they are.

3 A. It's a series of programs that patient identification  
4 information was put in, or calibration data, and the system  
5 analyzed the blood and then produced the results.

6 Q. Can you describe to me, from a computer programming  
7 point of view, how these pages describe the technology used to  
8 do things like gas analysis?

9 A. The column in the middle, which represents the output  
10 of the data, is spectral analysis output of data, and that data  
11 has patterns in it. And you generate --

12 MR. PEEK: Your Honor, before we testify from the  
13 document, could we have the document at least offered so that  
14 we can determine whether or not it is or is not into evidence?

15 MR. FLYNN: I'll offer the document, Your Honor.

16 THE COURT: All right.

17 MR. PEEK: Your Honor, I would object to this as  
18 irrelevant to this proceeding and so remote in time as to have  
19 no relevance to what is at issue here in terms of pattern  
20 recognition and our source code. This doesn't define the  
21 actual source code. Someone could compare what is being done  
22 here with what is actually being performed by the source code  
23 of eTrepid.

24 THE COURT: Well, it seems a little remote. It seems

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1 unrelated. But I believe that under their theory of the case,  
2 that it's not. And I'm going to allow him to develop that, so  
3 I'm going to allow the exhibit.

4 MR. PEEK: The other concern I have, Your Honor, is  
5 that what we have, which is Exhibit 21 -- and if the Court  
6 would look at the second page of that, it relates, if you will,  
7 Your Honor, to apparently who the owners are of the various  
8 copyrights. You will see here that the owner is not  
9 Dennis Montgomery or the Montgomery trust. It is, in fact,  
10 Computermate, Computermate, Computermate, Computermate in every  
11 one of these.

12 Where is the link as we go showing an assignment back,  
13 if you will, to the Montgomery trust? The Montgomery trust, in  
14 fact, owns them, if that's what the Library of Congress says  
15 the ownership of the copyrights is today.

16 So again, getting back to relevance, I think we'd have  
17 to start the thread of, I have the copyright, I own the  
18 copyright, this is the copyright, as opposed to this is the  
19 copyright, without at least establishing the predicate of  
20 ownership.

21 THE COURT: I remember the testimony with regard to  
22 what Computermate is. I see Mr. Montgomery's name on it. I  
23 think, in terms of relevance, the relevance has been at least  
24 established enough to my satisfaction, I'm going to admit

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1 Exhibits 20 and 21. And then --

2 MR. PEEK: He's not the owner of the copyrights,  
3 though, Your Honor.

4 THE COURT: I admitted them. And whether he's the  
5 owner or not will be developed in the testimony, and then I'll  
6 make a decision as to --

7 MR. PEEK: Whether to strike them or not?

8 THE COURT: I don't know about striking them, but  
9 whether or not they play into the decision I'm going to make.

10 (Defendant's Exhibits 20 and 21 were admitted into  
11 evidence.)

12 BY MR. FLYNN:

13 Q. With regard to Exhibit 20, Mr. Montgomery --

14 A. Yes.

15 Q. -- would you describe to the Court how Exhibit 20  
16 explains the nature of the software technology that was being  
17 used for the spectral gas -- spectral analysis and how that  
18 relates, first, to the copyrights in Exhibit 21 before we get  
19 to the ownership issues.

20 A. The software that did the detection of the anomalies  
21 and the patterns in the spectral analysis is that software that  
22 was developed originally. That is the original work.

23 Q. That's being described in Exhibit 20?

24 A. Yes, that's correct.

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1 Q. And the copyrighting of that technology to do the work  
2 that's described in Exhibit 20, which is the blood gas spectral  
3 analysis, is based on the copyrights that are marked in  
4 Exhibit 21; is that your testimony?

5 A. Yes.

6 Q. Now, today, who owns the copyrights that are reflected  
7 on Exhibit 21?

8 MR. PEEK: Objection. The best evidence is the  
9 document itself showing ownership.

10 THE COURT: Overruled.

11 BY MR. FLYNN:

12 Q. Who owns them, sir?

13 A. The original copyrights were filed on behalf of  
14 Computermate, which I was the owner.

15 Q. And subsequently, was there an assignment from  
16 Computermate to you?

17 A. Yes.

18 Q. And when did -- did -- at some point, did Computermate  
19 close and cease doing business?

20 A. Yes.

21 Q. When did that take place?

22 A. I'm thinking around '85.

23 Q. In regard to what we will call the source codes --

24 MR. PEEK: Your Honor, again, move to strike. Where

31 (Pages 118 to 121)

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1 is the assignment back to Computermate?

2 THE COURT: I don't know. Maybe we're getting there.  
3 Let's see. That was a question that I intended to ask myself,  
4 but I'm not asking it right now, so let's let this go forward a  
5 little bit.

6 Trust me that I'm going to give this evidence the  
7 weight that I think it deserves, but I need to hear it before I  
8 can understand its relationship and its relevance. So as a  
9 staring to these transactions, I need to get all the  
10 information before I make a ruling that's going to be  
11 prejudicial, or detrimental, to either side.

12 So, please, Mr. Flynn, go ahead.

13 MR. FLYNN: Thank you, Your Honor.

14 BY MR. FLYNN:

15 Q. Is there anything in Exhibit 20 that in some way shows  
16 how the copyrights in Exhibit 21 work?

17 A. Well, I own Computermate, and the copyrights -- I was  
18 the author, and I retained rights to those copyrights since the  
19 beginning of time.

20 Q. And after Computermate ceased doing business, did you  
21 retain those rights?

22 A. Yes, I did.

23 Q. Okay. Now, is there anything in Exhibit 20 that shows  
24 how the copyrights are at play in the spectral analysis? Is

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1 there anything the Court can look at?

2 A. Well, the source code was filed with the original  
3 work. And I mean, other than the names, there's nothing  
4 directly on here. I mean, I know the work.

5 Q. If you look at these various diagrams or lab report  
6 readouts --

7 A. Uh-huh.

8 Q. -- printouts, are those based on the copyrights that  
9 are in Exhibit 21?

10 A. All of the software on that system reflects those  
11 copyrights.

12 Q. Now, what is the terminology that you use to describe  
13 those copyrights?

14 A. Well, they contain the anomaly and the pattern  
15 detection work. That was the beginning of the work.

16 Q. Now, those copyrights, I believe, are dated in  
17 May 1982, is it?

18 A. Correct, I think up until February of '03.

19 Q. And between that time, May '82, February '03, to the  
20 present, do you know any person on the planet who has the  
21 anomaly detection software that is contained in these  
22 copyrights?

23 A. No.

24 Q. Has it ever been duplicated?

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1 A. Well, I -- I don't know about Corning, because I  
2 didn't continue doing work for them at some point. We -- you  
3 know, we had moved on to other things, so I really wouldn't  
4 know whether that's the case or not.

5 Q. All right. But in terms of the anomaly detection  
6 aspect of the software that's in these -- these copyrights?

7 A. I've never seen anything in the literature describing  
8 it.

9 Q. And at some time after 1982, did you improve on the  
10 technology that's in these copyrights?

11 A. Yes, I believe in '86 or '87. I can't remember  
12 exactly, but somewhere in that time frame.

13 Q. Describe to the Court what you did.

14 A. Well, these were originally written on a  
15 Hewlett-Packard computer, and I had translated them to work on  
16 IBM computers. This was the beginning when the IBM PC was  
17 first becoming available.

18 Q. And in what way did that improve or refine the anomaly  
19 detection software that you had proprietary rights in?

20 A. I was able to add more anomalies. I was able to make  
21 it run faster. And HP computers -- the IBM was -- it was  
22 pretty obvious that the IBM computer was to going to become  
23 pretty popular.

24 Q. And at some point, did you form a company called

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1 Barrett Labs?

2 A. Yes.

3 Q. When was that, sir?

4 A. I think around '85 or '86. I'm not certain of the  
5 date.

6 Q. And did you use the anomaly detection software that  
7 you had developed between '82 and '87 in Barrett Labs?

8 A. Yes.

9 Q. And in what way did you use it?

10 A. Well, we had hooked up to more sophisticated  
11 instruments. We did far more complicated spectral analysis  
12 work and so forth.

13 Q. How was Computermate dissolved?

14 A. I think it was either sold -- I think it was sold.

15 Q. And who was it sold to?

16 A. I don't recall the person.

17 Q. And how did you retain the rights in the company?

18 A. I have a letter retaining the rights to the original  
19 work.

20 Q. Now, after 1980 to 1987 period, in connection with  
21 Barrett Labs, did you do any further refining of the anomaly  
22 detection software that's in Exhibit 21?

23 A. From then to when?

24 Q. Well, when was the next time you did any refining?

32 (Pages 122 to 125)

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1 A. I don't remember if it was in 3Net or not. Surely  
2 after 3Net I did.

3 Q. Okay. When was 3Net?

4 A. '80- -- I think it was '87 to '92, '93.

5 Q. And what was 3Net?

6 A. 3Net was a company that had built large-scale clinical  
7 information systems in the hospital.

8 Q. And did any part of your anomaly detection software  
9 play any role with regard to your involvement with 3Net?

10 A. Well, I'm sure that there was some small pieces inside  
11 the 3Net software that used anomaly detection, but that was not  
12 their primary business.

13 Q. And what is the distinction between anomaly detection  
14 and pattern recognition?

15 A. Anomaly detection is looking for anything out of the  
16 normal, and pattern recognition is specifically looking for  
17 patterns in things.

18 Q. Are they two different technologies?

19 A. Yes.

20 Q. And does your prior testimony you just gave,  
21 basically, in a simple way, in a layman's way, describe the two  
22 different technologies?

23 A. Yes.

24 Q. And Exhibit 21 containing the copyrights was, in fact,

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1 used in connection with your company, Barrett Labs?

2 A. Yes.

3 Q. And in what way did you license that technology to  
4 your clients?

5 MR. PEEK: Best evidence is the license itself.  
6 Everything here lacks either an assignment document, a license  
7 document or anything else. The best evidence are the documents  
8 themselves to address the assignment or the licensing.

9 THE COURT: Objection is overruled. Go ahead.

10 BY MR. FLYNN:

11 Q. In what way was the technology -- anomaly detection  
12 software used, Mr. Montgomery?

13 A. In which company?

14 Q. In Barrett Labs.

15 A. Well, they had hooked up, I think I stated earlier,  
16 far more sophisticated instruments and required far more  
17 sophisticated anomaly detection or pattern recognition  
18 software.

19 Q. And at that point, to your knowledge, did anyone in  
20 the world possess the sophistication, the software, to do that  
21 type of work of anomaly detection?

22 A. Since our work was in medicine, I did not know of  
23 anyone.

24 Q. Now, when was the next time after 3Net that you had

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1 occasion to use your copyrights for anomaly detection?

2 A. I did some consulting work for Kaiser in '94, I  
3 believe. And I was building some instrumentation control  
4 unit -- I don't remember specifically what it was, but I was  
5 doing work for them.

6 Q. And so you did further work on anomaly detection?

7 A. Yes.

8 Q. Okay. Now, between '93 and '98, how were you -- what  
9 was your occupation?

10 A. I was self-employed as a consultant.

11 Q. And was that with Pacific Consulting?

12 A. Yes.

13 Q. And what type of consulting were you doing?

14 A. I was doing both medical -- and I started doing work  
15 in Los Angeles in motion pictures.

16 Q. And did anomaly detection software -- was that  
17 involved in any of your consulting work at that time?

18 A. Not anomaly detection.

19 Q. What was involved?

20 A. Pattern recognition.

21 Q. What type of pattern recognition?

22 A. I was working with a company that had an interest in  
23 trying to database assets out of live -- video -- movies.

24 Q. And what type of pattern recognition -- how would you

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1 describe that type of pattern recognition?

2 A. Well, that was looking for a known object in a film.  
3 So if they were looking for a cup, they would try to tell the  
4 computer, and they needed software to say in -- this cup, is it  
5 in any of these frames, and it would go look for it.

6 Q. Now, at some point, you met Mr. Trepp?

7 A. Yes.

8 Q. When did you first meet Mr. Trepp?

9 A. It might have been in '96 or '97. I don't recall.

10 The time I do recall is when I met him at the Eldorado in '98.

11 Q. Okay. And describe to the Court everything that you  
12 can recall in connection with your meeting with Mr. Trepp at  
13 the Eldorado in 1998.

14 A. I was just introduced to him by a gentleman named  
15 Steve Sands. And I've known Steve, I don't know, maybe a year  
16 or so forth. When I went there, he had heard some of the work  
17 I was doing in Los Angeles and said that he might have somebody  
18 that might be interested in it.

19 Q. Okay. Describe the conversation about what you and  
20 Mr. Trepp discussed with regard to the work you were doing.

21 A. I simply told him the work that I'd been doing in  
22 compression, both video and data compression, and I described  
23 that to him.

24 Q. Okay. As best you can recall, understanding you can't

33 (Pages 126 to 129)



Page 130

1 remember word for word, but as best you can recall, describe to  
2 the Court what you were telling Mr. Trepp about data  
3 compression.

4 A. I was simply telling him that I had the ability to  
5 shrink a movie much smaller at the time than the common video  
6 compressors worked.

7 Q. Okay. What is that, Mr. Montgomery?

8 A. It's a form of lossy data compression, where you take  
9 information and add a certain amount of loss into it and shrink  
10 it.

11 Q. And how does that differ from data -- strike that --  
12 from pattern recognition?

13 A. It's totally different. Pattern recognition is  
14 actually looking for something in the video.

15 Q. Now, when you say "it's totally different" -- I'm not  
16 a computer programmer and I'm not experienced in the ways of  
17 computer programming. Is there some way you can describe to  
18 the Court in a layman's way how they are two completely  
19 different animals?

20 A. Well, video compression is looking to shrink a file  
21 and trying to keep the file intact, mostly. Pattern  
22 recognition is looking through the file and trying to find  
23 things.

24 Q. Okay. Now, you obviously were in the courtroom during

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1 opposed to his understanding.

2 THE COURT: Well, I think that there are some claims  
3 here as to what the contract says and what it means and what  
4 the parties intended. And I know Mr. Trepp talked about what  
5 his intent was, and I think it will aid me in understanding  
6 exactly what we're dealing with. I'm going to overrule the  
7 objection. I think it's not necessarily to contradict the  
8 terms of the contract, but to explain them.

9 So, go ahead.

10 THE WITNESS: Data compression.

11 BY MR. FLYNN:

12 Q. And at this point in time, September 1998, how many  
13 different technologies did you have sophisticated knowledge of  
14 with regard to computer programming, other than data  
15 compression?

16 A. Well, I had spent, you know, the last 10 or 15 years  
17 working in medicine, so I had a lot of experience in building  
18 medical-type devices and medical programming through a lot of  
19 variety of areas, both in the clinical laboratory and the  
20 medical records and X-ray. And 3Net was building a large-scale  
21 clinical information system to do that.

22 Q. So you had all that sophistication?

23 A. Yes.

24 Q. What other sophisticated knowledge did you have?

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1 Mr. Trepp's testimony about Gunga Din and --

2 A. Right.

3 Q. -- discussing both pattern recognition and data  
4 compression before the deal was signed on September 28th, 1998.

5 A. Yes, I heard.

6 Q. And you heard it --

7 A. Yes.

8 Q. -- is that correct?

9 A. Yes.

10 Q. Was it truthful?

11 A. I don't recall anything to do with Gunga Din.

12 Q. Do you recall anything about pattern recognition?

13 A. No.

14 Q. Is it possible that you had that conversation?

15 A. No.

16 Q. What was in your mind -- what was your intent as a  
17 contracting party when you signed the contribution agreement  
18 and formed eTrepid, then Intrepid Technologies, with Mr. Trepp  
19 as to what you were putting into the company?

20 MR. PEEK: Your Honor -- I'm sorry. I apologize.

21 THE COURT: Go ahead.

22 MR. PEEK: My objection is to intent. I think the  
23 Court allowed "understood," but intent, I think, definitely  
24 would go to vary the terms and conditions of the contract, as

Page 133

1 A. Well, obviously, I had a lot of experience in pattern  
2 and anomaly recognition because it was used in those  
3 technologies.

4 Q. So when you made this deal with Mr. Trepp, again, what  
5 was your understanding, understanding the differentiation  
6 between these technologies, as to what you were putting in?

7 A. Data compression.

8 Q. At any time, in any discussions with Mr. Trepp prior  
9 to September 28th, do you recall any discussion about putting  
10 in any other technology other than data compression?

11 A. No.

12 Q. In fact, you signed the 1998 contribution agreement,  
13 sir?

14 A. Yes.

15 Q. And you're aware of its provisions?

16 A. Yes.

17 Q. You're aware of that provision, 1.2.1, which says that  
18 the only thing being given is the technology -- the software  
19 compression engine development program contained on CD  
20 Number 1?

21 A. Yes.

22 Q. Did you, in fact, prepare CD Number 1?

23 A. Yes.

24 Q. When did you prepare it?

34 (Pages 130 to 133)

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1 A. I don't know the exact date, but in that time frame.  
 2 Q. Did you deliver it?  
 3 A. Yes.  
 4 Q. You wanted to form this company; isn't that correct,  
 5 sir?  
 6 A. Yes.  
 7 Q. You wanted to put the data compression technology you  
 8 knew into that company; isn't that right, sir?  
 9 A. Yes.  
 10 Q. What was the then-best form that you could utilize to  
 11 put that data compression technology into the company?  
 12 A. I put it on a CD. Is that your question?  
 13 Q. Yes.  
 14 A. Yeah, I put it on a CD.  
 15 Q. And who did you give the CD to?  
 16 A. Doug Frye.  
 17 Q. Where did you sign the documents, the September 28th,  
 18 1998 contribution agreement, which has been marked as  
 19 Exhibit 3?  
 20 A. I believe in my home in Lodi.  
 21 Q. And did Frye give it to you?  
 22 A. Yes.  
 23 Q. Did you have any discussion with Mr. Frye about the  
 24 provisions, the language, in the contribution agreement?

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1 A. Yes. I mean, they wanted the CD Number 1, which  
 2 contained the software for data compression.  
 3 Q. If you hadn't delivered CD Number 1, would the company  
 4 have started?  
 5 A. No.  
 6 Q. How could the company have started if it didn't have  
 7 CD Number 1?  
 8 A. No, it did. That was the point.  
 9 Q. So, you gave the CD Number 1 to Mr. Frye?  
 10 A. Yes.  
 11 Q. Do you know what he did with it?  
 12 A. No.  
 13 Q. And thereafter, after the deal was made, you gave  
 14 Mr. Frye CD Number 1. Shortly thereafter, did Mr. Trepp leave?  
 15 A. Yes. He left, I believe, in November or December  
 16 of '98.  
 17 Q. And who was running the company after he left?  
 18 A. Doug Frye.  
 19 Q. What did Mr. Frye do?  
 20 A. Well, he told me that Warren wasn't going to be back  
 21 until May or June and that he was the one that was in charge of  
 22 the company.  
 23 Q. Now, let me refer you to the contribution agreement,  
 24 which has been marked as Exhibit 3, to paragraph 1.3, "Excluded

Page 136

1 Assets and Liabilities." Do you recall that provision, sir?  
 2 A. Yes.  
 3 Q. And does that provision accurately set forth the  
 4 agreement that you made with Mr. -- with Mr. Trepp?  
 5 A. Yes.  
 6 Q. And it was your understanding that you weren't giving  
 7 any technology other than data compression and the data  
 8 compression on CD Number 1; is that correct?  
 9 A. Yes.  
 10 Q. Did you and Mr. Frye have any discussion about that?  
 11 A. Well, I had to deliver the CD to him.  
 12 Q. So it was a given?  
 13 A. Yes.  
 14 Q. Now, what type of work did Mr. Trepp do in running  
 15 then Intrepid Technologies after Mr. Trepp left?  
 16 A. To be honest with you, I don't know because I  
 17 continued to do my work, and I was waiting for Warren,  
 18 obviously, to get back.  
 19 Q. What type of work were you doing?  
 20 A. Data compression, working on the data compression  
 21 model.  
 22 Q. Describe, if you can, in some detail -- see if you can  
 23 flesh that out a little bit. Were you working on a computer?  
 24 A. Yes.

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1 Q. What were you doing? Were you creating lines of code?  
 2 A. I mean, I was generating code and creating different  
 3 varieties of that particular technology.  
 4 Q. For different applications?  
 5 A. Yes.  
 6 Q. What types of different applications?  
 7 A. Well, data compression inside of Windows, and video  
 8 and audio requires a specific interface so you can hook to the  
 9 hardware devices in Windows. So, I was building those  
 10 interfaces for those different hardware devices.  
 11 Q. And what was your typical work routine during that  
 12 time frame, i.e., early October 1998 through the end of  
 13 December '98?  
 14 A. I worked eight, ten hours a day on the software.  
 15 Q. During that time frame?  
 16 A. Yes.  
 17 Q. How many days a week?  
 18 A. Probably five or six.  
 19 Q. During that time frame?  
 20 A. Yes.  
 21 Q. And for how long did you continue developing different  
 22 applications with that data compression technology?  
 23 A. Continuously.  
 24 Q. Up until what time?

35 (Pages 134 to 137)

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1 A. Until I was fired.

2 Q. Until you were fired? Okay.

3 Now, between the time you were working exclusively in  
4 building those models that you described, forgetting, for the  
5 moment, any anomaly detection in connection with government  
6 classified issues, did you do any other type of data  
7 compression work at eTreppid Technologies?

8 A. Well, we were developing an audio and a video and a  
9 data Kodak in multiple forms.

10 Q. And how many lines of code were typically being  
11 written per day in connection with these applications you were  
12 preparing?

13 A. By me personally or collectively?

14 Q. Well, let's first talk you personally.

15 A. That's very hard to determine. Thousands.

16 Q. And collectively, how many lines of code were being  
17 written?

18 A. Five to ten thousand.

19 Q. Per day?

20 A. Yes.

21 Q. All in data compression?

22 A. Yes.

23 Q. At this -- and for -- and that continued all the way  
24 up until the time you were fired?

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1 A. That's correct.

2 Q. Now, where is, today, all of those -- before we get to  
3 the source codes -- all of the lines of code that were created  
4 over all of those years for the data compression?

5 A. In eTreppid.

6 Q. And you've heard this testimony saying this has been  
7 deleted and that has been deleted. If you walked over to  
8 eTreppid tomorrow morning, could you find the source codes,  
9 first, for all of those lines of code?

10 A. Assuming it hasn't been destroyed, yes.

11 Q. Okay. Now, let's talk a little bit about the -- what  
12 you call, what, "copy and destroy," when you're doing a -- when  
13 you're creating something on a server.

14 A. I think what you're asking is, when people are writing  
15 computer programs, the computers are continuously building and  
16 destroying files, I mean, hundreds of files, files that are  
17 used in the process of making the source code.

18 Q. So, at every workstation, every programmer is  
19 continuously creating and destroying every time, virtually, he  
20 writes code?

21 A. That's correct.

22 Q. And that has always been the way at eTreppid  
23 Technologies; is that correct?

24 A. The nature of building complex programs, that is an

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1 inherent -- you know, a task in it.

2 Q. Okay.

3 A. Things are built and taken apart.

4 Q. Now, have you ever destroyed in any way or taken any  
5 data compression technology from eTreppid?

6 A. No.

7 Q. On how many different computers at eTreppid does data  
8 compression technology appear?

9 A. Over a hundred.

10 Q. On how many different hard drives?

11 A. Hundreds. Three or four hundred, probably.

12 Q. And we heard a figure of about 150 million bytes of  
13 information, was it?

14 A. Files.

15 Q. Files?

16 A. Yes.

17 Q. And Mr. Venable testified that there's still  
18 80 percent of that that he's found there. Have you heard that  
19 testimony?

20 A. Yes.

21 Q. And with regard to the other 20 percent, have you done  
22 or taken or deleted any of that 20 percent?

23 A. No.

24 Q. And if Mr. Venable cannot find this alleged purported

Page 141

1 20 percent, do you have any explanation as to where it might  
2 be?

3 A. Well, it was on the computers when I left the  
4 building, um, so they're obviously not looking in the right  
5 spots, I presume.

6 Q. And as the chief technology officer, unless someone  
7 else has destroyed it, if you went in there, could you find it?

8 A. If it hadn't been destroyed, yes.

9 Q. Now, is there any reason it would have been destroyed  
10 by other eTreppid Technologies employees?

11 A. The stuff I was working on downstairs had intrusion  
12 detection.

13 Q. Now, when you say "downstairs," what do you mean?

14 A. In the area of the warehouse.

15 Q. And describe to the Court what that downstairs area --  
16 or how it was configured.

17 A. There was about 100 computers that were in cabinets  
18 and about 20 computers that were not in cabinets. And those  
19 computers were all hooked together in what's called one  
20 cluster, and information was, obviously, on those computers.

21 MR. FLYNN: Your Honor, I have a chronology that will  
22 simply aid the Court. I would just simply ask that it be  
23 marked at this point in time. I don't know if I'll ever offer  
24 it. I think it would help the Court to follow it.

36 (Pages 138 to 141)

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1 THE COURT: Is this going to be for demonstrative  
2 purposes?

3 MR. FLYNN: Yes, Your Honor.

4 THE COURT: I don't think it needs to be marked,  
5 unless somebody wants it to be marked. I mean, if it's  
6 something you can write on the board, if you wanted to take the  
7 time to write it on the board --

8 MR. FLYNN: It would be time-consuming.

9 MR. PEEK: It's only for demonstrative purposes, Your  
10 Honor, and not a matter of evidence. And he could use anything  
11 he wants. And like you said, he could write it on the board.

12 THE COURT: That's why I'm saying, let's use the  
13 chronology.

14 MR. PEEK: But let's not assume that every one of  
15 these items are, in fact, evidentiary or proven.

16 THE COURT: Any more than if he wrote them on the  
17 board or anybody wrote them on the board.

18 BY MR. FLYNN:

19 Q. Now, at some point in time, sir, during 1998, did you  
20 have occasion to work 18 hours and seven days a week?

21 A. In '98?

22 Q. Yes.

23 A. I lost my train of thought.

24 MR. PEEK: Objection. Asked and answered. He said he

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1 worked about five or six days a week.

2 THE WITNESS: That was at the very beginning. I had  
3 not moved up here.

4 THE COURT: That was what he said.

5 BY MR. FLYNN:

6 Q. How were you being treated by eTreppid Technologies in  
7 terms of your status?

8 A. I was an independent contractor.

9 Q. And how much were you being paid?

10 A. Well, I started out, I believe, at 12,000 a month, I  
11 think, in '98 and '99. In 2000, I believe I went to 192,000.  
12 I'm not certain of the date, but roughly around then. No,  
13 actually, I went to one-sixty in 2000, and then I went to --  
14 in '99 or 2000, I went to one-ninety or 200,000, I believe.

15 Q. Now, at some time in the summer of 1999, did you begin  
16 to question the expenses that eTreppid was incurring, when you  
17 were 50 percent owner, for airfare?

18 A. Yes.

19 Q. And what happened?

20 A. I believe we needed money already. Um, and I was  
21 somewhat shocked. And I think I actually inquired in to Doug,  
22 and he said we had a pretty big airfare bill.

23 Q. Did you ask him if the 1.3 million had been paid in?

24 A. Yeah. He said we're out of money.

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1 Q. And did he tell you whether the 1.3 million had been  
2 paid in?

3 A. I don't believe he said it had been paid in, but he  
4 said we were out of money.

5 Q. And did he tell you how much the airfare bill was  
6 that -- that he described to you was the reason you were out of  
7 money?

8 A. I believe it was around 500,000.

9 Q. Now, during that period of time, did you have a  
10 conversation with Mr. Trepp, around the summer of 1999, about  
11 your stock interest in eTreppid?

12 A. Yes.

13 Q. What was that conversation?

14 A. It was regarding the initial dilution I had to give  
15 the stock up for.

16 Q. How did that occur, Mr. Montgomery?

17 A. I don't remember the exact date, but I was told --  
18 Steve Sands approached me and told me that documents were  
19 produced and I -- that I was immediately to give up 10 percent  
20 of my stock.

21 Q. This is the same Steve Sands who was the finder who  
22 connected you to Mr. Montgomery (sic); is that correct?

23 A. "Trepp," yes.

24 Q. Mr. Trepp.

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1 A. Yes.

2 Q. And did you have a conversation with either Mr. Sands  
3 or Mr. Trepp about why your 10 percent should be given to  
4 Mr. Sands?

5 A. I -- I don't know the exact date, so my date may be  
6 off. I think Mr. Trepp was still out of the country when I was  
7 approached by Mr. Sands initially, and I couldn't contact him  
8 because he was on a ship.

9 Q. And -- but Mr. Sands wanted 10 percent of what you  
10 owned?

11 A. Yes.

12 Q. And then did you subsequently meet with Mr. Trepp on  
13 this issue?

14 A. We -- I know I -- I had to sign the documents that  
15 day. I was given no choice.

16 Q. When you say you were given no choice, who gave you no  
17 choice?

18 A. Mr. Sands.

19 Q. What did he say to you?

20 A. "You will sign the documents today as they were  
21 prepared."

22 Q. Or what?

23 A. "Or you won't have any deal with Warren Trepp."

24 Q. And how much were you then being paid, 12,000 a month?

37 (Pages 142 to 145)



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1 A. Roughly, yes.  
 2 Q. And is it fair to say you were basically living hand  
 3 to mouth at that time with regard to that salary, supporting  
 4 your family?  
 5 A. Yes.  
 6 MR. PEEK: Objection, Your Honor. "Hand to mouth"?  
 7 12,000 a month? 144,000?  
 8 THE COURT: I mean, you're objecting as to whether or  
 9 not that's hand to mouth?  
 10 MR. PEEK: But that's also leading.  
 11 MR. FLYNN: I'll withdraw it.  
 12 MR. PEEK: Also, I was a little bit slow on the gun  
 13 because I wasn't sure how Steve Sands did it, but I'm going to  
 14 move to strike all the statements of Steve Sands as hearsay.  
 15 I'm not sure he's identified -- I mean, other than the  
 16 finders -- so I thought, well, maybe that's the, maybe, the  
 17 leap that he's somehow -- the testimony will be admissible.  
 18 But the whole testimony was that he had no choice,  
 19 sign or no deal with Warren Trepp. I move to strike all of  
 20 that as hearsay.  
 21 MR. FLYNN: I am just offering this as to the state of  
 22 mind, Your Honor.  
 23 THE COURT: All right. The motion is denied.  
 24 ////

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1 BY MR. FLYNN:  
 2 Q. Mr. Montgomery, did you sign the documents?  
 3 A. Yes.  
 4 Q. Now, are you married, sir?  
 5 A. Yes.  
 6 Q. How long have you been married?  
 7 A. Thirty-three years.  
 8 Q. And what documents did you sign?  
 9 A. I think it was a stock -- I don't want to say a stock  
 10 transfer. It was some document like that. I had this  
 11 document, but I had to transfer 10 percent of it to him.  
 12 Q. And then what happened with regard to this 10 percent?  
 13 A. At some point, I think Mr. Trepp came back, and I  
 14 explained the problem or situation I was in.  
 15 Q. And what did he say?  
 16 A. He would deal with it.  
 17 Q. Then what happened?  
 18 A. I went, at some point, back to the office of the  
 19 attorney that represented Mr. Sands with Mr. Sands there. And  
 20 they had come up with a new deal where, all of a sudden, I only  
 21 had to give him, I believe, 5 percent of the stock.  
 22 Q. And what happened to the other 5 percent?  
 23 A. I believe -- I don't know if all 5 percent went to  
 24 Mr. Frye.

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1 Q. Did you hand another assignment to Mr. Frye?  
 2 A. Yes.  
 3 Q. And do you know -- you don't recall the specific  
 4 percentage, but it was --  
 5 A. I think it might have been 4 percent. I don't really  
 6 remember.  
 7 MR. PEEK: Your Honor, I'm going to object to this  
 8 line of questioning as being irrelevant related to the  
 9 dilution. I don't know where we're going here, Your Honor.  
 10 THE COURT: Well, I'm not sure.  
 11 MR. PEEK: I want to try to finish, as you did,  
 12 tonight. We're already past 40 minutes.  
 13 THE COURT: I have a concern about where it's going  
 14 too. But I would like to allow it to continue just for a  
 15 little bit, and we'll see where it's going.  
 16 MR. FLYNN: I'll keep moving on, Your Honor. And it  
 17 goes to the parties conforming to the terms of the contract.  
 18 BY MR. FLYNN:  
 19 Q. Now, at some point, did you, in early 2000, request to  
 20 see the books and records of eTrepid Technologies after you  
 21 had just lost this stock to Mr. Sands and Mr. Frye?  
 22 MR. PEEK: Objection, Your Honor. Characterized as  
 23 loss of stock.  
 24 THE COURT: Yes, if you could just ask the question

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1 without characterization.  
 2 BY MR. FLYNN:  
 3 Q. After, the stock ended up in the hands of Frye and  
 4 Sands?  
 5 A. Yes.  
 6 Q. And were you given access to the records?  
 7 A. No.  
 8 Q. Did you ask Mr. Trepp at that point how much money had  
 9 been put into the company?  
 10 A. I believe so.  
 11 Q. What did he say?  
 12 A. Several million.  
 13 Q. Did you ask to see it to verify it?  
 14 A. I believe I wanted some form of proof.  
 15 Q. And were you given any form of proof?  
 16 A. No.  
 17 Q. Did you then have a discussion about the airfare  
 18 expenses of eTrepid Technologies when you were now, roughly, a  
 19 40 percent owner during the year 2000?  
 20 A. I had never been around anybody where the airfares  
 21 were like this. This is unbelievable.  
 22 Q. And what were you told the airfares were in the year  
 23 2000?  
 24 MR. PEEK: Do we have by whom, Your Honor?

38 (Pages 146 to 149)

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1 BY MR. FLYNN:

2 Q. By whom?

3 A. By whom? I mean, it was obvious, because I had seen a  
4 few of the bills, that, you know, they were high. You're  
5 talking fifty, sixty thousand a trip.

6 Q. And where were the trips, to your knowledge?

7 A. New York, LA.

8 Q. On what type of airplane?

9 A. Gulfstream, usually III or IV.

10 Q. Privately chartered?

11 A. Yes.

12 Q. What was the purpose of the trips?

13 A. I can't remember all of them. Did we ever go on  
14 business? Yes. But I can't vouch for every trip that that  
15 plane was ever used for.16 Q. Did you have an understanding in the year 2000 as to  
17 how much, roughly, the expenses were for airfare at eTreppid  
18 Technologies?19 MR. PEEK: Objection, Your Honor. Could we have a  
20 foundation as opposed to an understanding.

21 BY MR. FLYNN:

22 Q. Where did you get the understanding from?

23 THE COURT: Well, first of all, did he have an  
24 understanding.

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1 BY MR. FLYNN:

2 Q. Did you have an understanding, yes or no?

3 A. Yes.

4 THE COURT: Where did you get the understanding?

5 BY MR. FLYNN:

6 Q. Where did you get it?

7 A. Mr. Trepp.

8 THE COURT: All right. Go ahead.

9 BY MR. FLYNN:

10 Q. And what was your understanding as to approximately  
11 the expenses were in the year?12 MR. PEEK: Your Honor, do we have a conversation  
13 where, Mr. Trepp, time, place, who was present? Same  
14 foundation that Mr. Flynn expected of us.15 THE COURT: I understand. But I think -- what I think  
16 he's asking is what did Mr. Trepp tell him about that.17 So if you could just ask him that question, then we're  
18 not talking about his understanding, but what he was told.

19 BY MR. FLYNN:

20 Q. What did he tell you?

21 A. That he had signed a contract for so many hours of  
22 flight and that they had guaranteed those hours.

23 Q. Who did he tell you he signed the contract with?

24 A. Trans-Exec in Van Nuys, California.

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1 Q. And did he tell you how much it was costing the  
2 company?

3 A. I believe he said it was a million dollars.

4 Q. Now, let's move forward into November of 2001. Prior  
5 to November of 2001, was all your work still data compression?

6 A. Yes.

7 Q. And in November of 2001, did you have a conversation  
8 with Mr. Trepp about sharing the profits of eTreppid  
9 Technologies?10 A. Well, I was concerned how I was going to get profit  
11 out of the company.

12 Q. And what did you say to him?

13 A. "How am I going to get profit out of the company?"

14 Q. What did he say?

15 A. "We haven't made any money yet."

16 Q. And did you bring up the airfare expenses?

17 A. Yes.

18 THE COURT: Excuse me. I just wanted to ask my court  
19 reporter how she was holding up. I didn't mean to -- let me  
20 just interrupt for a minute. How much longer are you going to  
21 be with this witness?

22 MR. FLYNN: What time did Your Honor want to try to --

23 MR. PEEK: Don't take all my time, Mr. Flynn.

24 MR. FLYNN: I'm thinking 20 minutes, Your Honor.

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1 THE COURT: Well, perhaps this would be a good point  
2 in time to take a break. We've been going since a little after  
3 5:00. Would you anticipate an equal amount of time on  
4 cross-examination?5 MR. PEEK: I would anticipate an equal amount of time  
6 on cross-examination. So far, he's gone 40 minutes, almost 50.7 THE COURT: I said all of it was irrelevant, so what  
8 are you going to cross-examine him about? I'm just kidding.9 MR. PEEK: I understand, Your Honor. That's a nice  
10 yank. I appreciate the yank. But by the same token, the Court  
11 has considered it relevant, so I have to at least address the  
12 points that were made by Mr. Flynn. If the Court had sustained  
13 it, I wouldn't have gone into it, Your Honor. But I appreciate  
14 the yank.15 THE COURT: All right. Let's be in recess for 15  
16 minutes, so quarter after 7:00.

17 (A brief recess was taken at the hour of 7:00 p.m.)

18 THE COURT: Be seated.

19 BY MR. FLYNN:

20 Q. November 2001, prior to November 2001, who paid for  
21 your medical insurance?

22 A. I did.

23 Q. Did you get any other employee benefits?

24 A. No.

39 (Pages 150 to 153)

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1 Q. In November 2001 -- or, strike that.

2 Prior to 2001, was anything other than data  
3 compression work being done at eTreppid Technologies?

4 A. The video game -- the video game was.

5 Q. And are you -- you're not making any claim of any  
6 ownership of any aspect of the video game; is that correct?

7 A. No.

8 Q. In November 2001, did you have a meeting with  
9 Mr. Trepp regarding your stock?

10 A. Well, I was being -- they needed to raise money, and I  
11 was going to be diluted.

12 Q. Is that what Mr. Trepp told you?

13 A. Yes.

14 Q. Did you have a conversation at that time about  
15 Doug Frye's legal expenses being charged off against the  
16 company?

17 A. Yes. They were enormous, I thought.

18 Q. And what range per year were they?

19 A. 200,000.

20 Q. And did you ask him if Mr. Frye was then doing  
21 \$2000,000 a year of work for eTreppid Technologies?

22 A. He said he would look into it.

23 Q. Did you ask to see the books and records of the  
24 company to see what else was being expensed against the

1 A. Yes.

2 MR. FLYNN: I'd offer this, Your Honor.

3 MR. PEEK: No objection, Your Honor.

4 THE COURT: It's admitted.

5 (Defendant's Exhibit 22 was marked and admitted into  
6 evidence.)

7 MR. PEEK: Is this 22?

8 THE CLERK: Yes, Exhibit 22.

9 THE COURT: I'm still not sure how this is all tied  
10 into the issue we're trying to decide here today. It might be  
11 tied into some potential counterclaims, I suppose, but I don't  
12 see --

13 MR. FLYNN: It has to do with the breach of the  
14 contract and the ultimate fight that takes place. And  
15 notwithstanding Mr. Trepp's testimony in the fall of 2005, this  
16 was the foundation for the -- an accumulation.

17 MR. PEEK: I haven't heard what the breach of contract  
18 was yet, though, Your Honor. He received \$975,000; he paid  
19 back \$975,000.

20 THE COURT: I understand.

21 MR. PEEK: Or, was it Doug Frye's legal fees?

22 THE COURT: Try not to spend a whole lot of time on  
23 this.

24 MR. FLYNN: I won't, Your Honor.

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1 company?

2 A. Yes.

3 Q. Were you given access?

4 A. No.

5 Q. And what happened in connection with -- with the stock  
6 transaction in November 2001?

7 A. I don't remember the exact date, but I had to borrow  
8 250,000 so I would not be diluted.

9 Q. And at that time, did you also sell 2 percent of your  
10 stock to someone named Wayne Primm?

11 A. Yes.

12 Q. And how did that transaction take place?

13 A. Warren made an arrangement with Wayne, and Wayne and  
14 Doug -- I don't know who -- they carried out the logistics of  
15 it.

16 Q. Were you paid \$1.5 million?

17 A. I believe so, yes.

18 Q. And what did you do with the \$1.5 million?

19 A. I wrote Mr. Trepp back two checks, one for  
20 980-some-thousand and one for 100,000.

21 Q. And, in fact, was the check in the amount of  
22 \$975,000.29?

23 A. Yes.

24 Q. And is that a copy of the check?

1 BY MR. FLYNN:

2 Q. And then did you have to pay taxes?

3 A. Yes.

4 Q. How much did you pay in taxes?

5 A. I believe 282,000.

6 Q. How much did you net?

7 A. I believe a hundred grand.

8 Q. Now, in February 2002, where did you go?

9 A. To a location in Florida.

10 Q. And was that a government location?

11 A. Yes.

12 Q. And who went with you?

13 A. I think, the first day, I went by myself.

14 Q. And for what purpose did you go?

15 A. We went to demonstrate video compression.

16 MR. PEEK: Could we have the "we," Your Honor?

17 THE WITNESS: I'm sorry. I went to demonstrate video  
18 compression.

19 BY MR. FLYNN:

20 Q. At some point, did someone else show up from eTreppid?

21 A. Yes.

22 Q. Who?

23 A. Patty Gray.

24 Q. And how long were you there?

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1 A. I believe five days, four or five days.  
 2 Q. What type of video compression did you demonstrate?  
 3 A. I took data off of an aircraft, and I streamed it at a  
 4 very low kilobit rate.  
 5 Q. Are we getting into classified information?  
 6 A. Yes.  
 7 Q. After you did this, did you go back and have a  
 8 discussion with Mr. Trepp?  
 9 A. Yes.  
 10 Q. And what was the nature of that discussion in terms of  
 11 whether or not eTreppid was going to get involved in  
 12 object-tracking?  
 13 A. When I -- when I was out there, I did one  
 14 demonstration of object-tracking, and I came back and told him  
 15 the results of the object-tracking and the results of the video  
 16 compression.  
 17 Q. So there were two different technologies being  
 18 demonstrated out there?  
 19 A. Yes.  
 20 Q. And what did Mr. Trepp say?  
 21 A. He was very interested in the data compression.  
 22 Q. The video compression/data compression?  
 23 A. Yes.  
 24 Q. Was he interested in the object-tracking?

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1 A. Not really.  
 2 Q. What did he say?  
 3 A. He was very interested in the data compression.  
 4 Q. And thereafter, during the year 2002, what were you  
 5 working on, as the chief technology officer?  
 6 A. Video compression.  
 7 Q. And during the year 2002, who was paying your medical  
 8 insurance?  
 9 A. I was.  
 10 Q. And what type of documents were you getting from  
 11 eTreppid with regard to your status?  
 12 A. A 1099.  
 13 Q. And were you getting a K-1?  
 14 A. Yes.  
 15 Q. All right. Now, in November 2002, did something  
 16 happen with your stock?  
 17 A. Well, I believe I was diluted again, if that's your  
 18 question.  
 19 Q. And did you have to, again, pay back money to  
 20 Mr. Trepp?  
 21 A. I don't believe at that time -- I'm -- I'm not  
 22 certain.  
 23 Q. At some point, did you pay back money for --  
 24 A. Yes, yes.

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1 Q. And in 2002, did you have occasion to see Mr. Trepp  
 2 and Mr. Milliken on the premises of eTreppid Technologies?  
 3 A. Yes. They came to our building. I don't remember if  
 4 it was December, but they had come to our building.  
 5 Q. And did you have a conversation with Mr. Trepp about  
 6 it?  
 7 A. Yes.  
 8 Q. And what was that conversation?  
 9 A. I was surprised that that was going to happen.  
 10 Q. And what did you say to him about Mr. Milliken?  
 11 A. I don't know how we would ever get clearance in the  
 12 government with him as an investor.  
 13 Q. Did he tell you what Mr. Milliken was going to invest?  
 14 A. I thought he said 10 or 12 million.  
 15 Q. For how much of the company?  
 16 A. Five percent.  
 17 Q. Now, in December of 2002, did you complete certain  
 18 tests?  
 19 A. 2002 or '3?  
 20 Q. December 2002.  
 21 A. Yes.  
 22 Q. What tests did you complete? Without describing the  
 23 contents, just what, generically, was the nature of the test?  
 24 A. We, once again, did some tests on aircraft with the

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1 video compression.  
 2 Q. And did any of those -- aspects of those tests involve  
 3 anomaly detection?  
 4 A. Yes, I believe it was pattern recognition.  
 5 Q. And without getting into the contents of or what you  
 6 were actually doing, can you differentiate for the Court?  
 7 MR. PEEK: Your Honor, could I ask if the witness is  
 8 just reading from his timeline or actually is testifying from  
 9 memory?  
 10 THE WITNESS: Testifying from memory.  
 11 MR. PEEK: Okay. Could we have the timeline removed  
 12 from the witness stand?  
 13 THE COURT: I don't know that that's necessary.  
 14 MR. LOGAR: I don't think he has a right to do that.  
 15 THE COURT: I don't either.  
 16 MR. PEEK: Your Honor, I think I'm --  
 17 MR. LOGAR: If the witness is using a document to  
 18 refresh his recollection, and Counsel has a right to see it,  
 19 but he has no right to --  
 20 MR. PEEK: But who prepared this, Your Honor? Did he  
 21 prepare it? Did it come contemporaneous from notes? Where did  
 22 it come from? I think I do have a right to know, and I don't  
 23 think the witness should be using it to testify from. It's not  
 24 going to come into evidence, Your Honor. It's not his notes,

41 (Pages 158 to 161)



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1 it's not contemporaneous, and I don't think he should be using  
2 it, respectfully, Your Honor.

3 THE COURT: It looks kind of like a script to me.

4 MR. PEEK: It does look like a script.

5 THE COURT: I think perhaps it's a good idea not to  
6 refer to it, at least right now. If you have something that  
7 you can't remember or want to refresh your recollection, we'll  
8 see about it.

9 MR. PEEK: We'll put it aside, then, Your Honor?

10 MR. FLYNN: Turn it over, Mr. Montgomery.

11 BY MR. FLYNN:

12 Q. At some point, did you complete these tests?

13 A. Yes.

14 Q. Okay. And how would you differentiate the technology  
15 that was being used on the testing with other types of  
16 technology that you owned or eTreppid was -- or eTreppid owned?

17 A. This is what time frame? I believe December of 2002?

18 Q. Correct.

19 A. Is that the time frame?

20 Q. Right.

21 A. I believe Zehang, which had testified earlier, had  
22 just been hired, and he was beginning to do some work in  
23 object-tracking. I, on the other hand, was continuing to do --  
24 had my anomaly and pattern detection software that I had made

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1 earlier. I had used that on occasion to test with also, and  
2 video and data compression continued.

3 Q. And was eTreppid paid for these tests?

4 A. Yes, yes.

5 Q. How much?

6 A. I believe 280,000.

7 Q. And after these tests were completed -- strike that.

8 At the end of 2002, when these tests were complete -- and as I  
9 understand your testimony, based in part on your anomaly  
10 detection and pattern recognition software; is that correct,  
11 sir?

12 A. Yes.

13 Q. Were you still an independent contractor?

14 A. Yes.

15 Q. Was that technology complete?

16 A. Yes.

17 Q. Did you own it?

18 A. Yes.

19 Q. And were you still an independent contractor?

20 A. In 2002?

21 Q. Yes.

22 A. Yes.

23 Q. In January 2003, did -- did you have a conversation  
24 with Mr. Trepp about the change of your status?

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1 A. Yes. They told me I was going to become an employee.

2 Q. He told you, you were now going to be an employee?

3 A. That's correct.

4 Q. Now, with regard to your routine work in the company,  
5 after you were supposedly designated "employee," did anything  
6 change with regard to how you supervised yourself, conducted  
7 yourself, and did you work?

8 A. No.

9 Q. Was there any change of any nature or description

10 between when you were classified as an independent contractor  
11 and the way you worked and when you were now classified as an  
12 employee?

13 A. No.

14 Q. And the technology, the anomaly detection and pattern  
15 recognition software, as of December '02, was complete?

16 A. Yes.

17 Q. And did that result, in early '03, of a government  
18 contract?

19 A. I think it was sometime around March or April.

20 Q. And now, was that for an agency within the government  
21 different than the Air Force?

22 A. Yes.

23 Q. And did you sign an agreement in connection with that  
24 project --

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1 A. Yes.

2 Q. -- with that department of the government?

3 A. Yes.

4 Q. And just generically, under that agreement --

5 MR. PEEK: Your Honor, could we have the agreement, if  
6 this is separate and apart from eTreppid, and maybe -- may I  
7 have the witness a little bit on voir dire?

8 THE COURT: Hold on a second.

9 MR. PEEK: I'm trying to understand, is this a  
10 separate contract with eTreppid?

11 THE COURT: Hold on. Let me just ask Counsel, is this  
12 a separate contract between Mr. Montgomery and this other  
13 government agency?

14 MR. FLYNN: This is the oath of secrecy, Your Honor.  
15 We're not into the --

16 THE COURT: All right.

17 MR. FLYNN: But --

18 MR. PEEK: Well, I didn't hear the answer.

19 THE COURT: He said an oath of secrecy.

20 MR. PEEK: Your Honor, hiding behind the so-called  
21 national security --

22 THE COURT: Well, he hasn't -- all he said is, did you  
23 sign --

24 MR. PEEK: Well, this is the oath of secrecy. That's

42 (Pages 162 to 165)

Page 166

1 the agreement --  
 2 THE COURT: Did he sign it? That's fine. I think he  
 3 can answer that.  
 4 MR. PEEK: I apologize, Your Honor. I thought he was  
 5 talking about a separate contract for work.  
 6 BY MR. FLYNN:  
 7 Q. Did you sign a document, you personally, with the  
 8 government with regard to your security clearance in connection  
 9 with what you could disclose and not disclose ever to anybody?  
 10 A. Yes.  
 11 Q. And did an individual from this department give you  
 12 that contract?  
 13 A. Yes.  
 14 Q. Did you execute it?  
 15 A. Yes.  
 16 Q. Did you give it back to him?  
 17 A. Yes.  
 18 Q. Did you read it?  
 19 A. Yes.  
 20 Q. And did he give you a copy of it?  
 21 A. No.  
 22 Q. Under the terms of that contract, what is your  
 23 understanding today as to whether you can disclose anything  
 24 about the identity of anybody or the work you did in connection

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1 with the March 2003 contract for this department?  
 2 A. Well, we -- we signed -- the agreement states that I  
 3 cannot divulge the nature of the work or who the clients are.  
 4 Q. And can you imagine any higher governmental security  
 5 or classified project at that time frame than what you were  
 6 doing?  
 7 MR. PEEK: Your Honor, I would object to that  
 8 because --  
 9 THE COURT: Yeah, if we're not going to get to know  
 10 what it is, the testimony about something higher than that  
 11 can't be cross-examined about. So since that cross-examination  
 12 is foreclosed, I'm not going to allow that question.  
 13 MR. FLYNN: Fine. Thank you, Your Honor.  
 14 BY MR. FLYNN:  
 15 Q. Did you use source codes to do this project?  
 16 A. Yes.  
 17 Q. Where did you get them?  
 18 A. There were multiple facets to the project. The video  
 19 and the face recognition was eTrepid's, and the anomaly and  
 20 pattern detection was mine.  
 21 Q. And in connection with this particular project, did  
 22 you have discussions -- just yes or no -- with governmental  
 23 agents with regard to the anomaly detection aspect of the  
 24 software?

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1 A. At that time, no.  
 2 Q. At some point, did you have these discussions?  
 3 A. Yes.  
 4 Q. And when?  
 5 A. September of '03.  
 6 Q. And did you complete the project to the satisfaction  
 7 of the government?  
 8 A. Yes.  
 9 Q. And the source codes that you used in terms of  
 10 governmental classification, what are they called,  
 11 Mr. Montgomery, the anomaly detection source codes?  
 12 A. Well, it was called the anomaly detection or pattern  
 13 recognition source codes.  
 14 Q. What the does the term "SAP" mean?  
 15 A. Special access program.  
 16 Q. Does anyone else have an eTrepid -- have any dealing  
 17 with any governmental agency about special access programs?  
 18 A. Ever?  
 19 Q. During this time frame.  
 20 A. Not that I know of.  
 21 Q. Were the source codes classified?  
 22 A. I believe, yes.  
 23 Q. And were they called SAP?  
 24 A. No. Well, it was just called source codes under that

Page 169

1 umbrella.  
 2 Q. Under the umbrella of SAP?  
 3 A. Yes.  
 4 Q. How much was being paid by the government -- this  
 5 governmental agency for the work you were doing during this  
 6 time frame?  
 7 A. Roughly, 350,000 a month.  
 8 Q. And for how long did you do it?  
 9 A. I think about a year.  
 10 Q. Up until what time?  
 11 A. September, October of 2004.  
 12 Q. Now, in September -- strike that. In February of '03,  
 13 did you have a discussion with Mr. Trepp about the ownership of  
 14 anomaly detection?  
 15 A. Yes.  
 16 Q. What was that discussion?  
 17 A. I wanted to know how I was going to be compensated for  
 18 it.  
 19 Q. And this was during the period where this governmental  
 20 contract was developing?  
 21 A. Yes.  
 22 Q. And what did he say?  
 23 A. He would work it out.  
 24 Q. Did you -- did you tell him who owned the technology

43 (Pages 166 to 169)

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1 that was being used?

2 A. He knew who did.

3 Q. And what did he say?

4 MR. PEEK: Objection, Your Honor. Nonresponsive.

5 THE COURT: Did you tell him?

6 THE WITNESS: I'm sorry. Yes.

7 THE COURT: What did you tell him?

8 BY MR. FLYNN:

9 Q. What did you say to him?

10 A. I owned it.

11 Q. And what did he say?

12 A. I think, initially, nothing. He just kept saying he

13 would work it out.

14 Q. And then at some point, did the -- did he acknowledge

15 your ownership?

16 A. Yes.

17 Q. When?

18 A. Middle -- middle of 2004.

19 Q. Now, in July 2003, did this particular department of

20 the government state that they wanted security clearances for

21 five people?

22 A. I think -- yes. Well, the way that worked, actually,

23 was after December of 2002, the Air Force applied for the

24 government because we needed access to those programs. And

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1 when we started doing the work in 2003, they accelerated it,

2 the other group.

3 Q. Okay. And what is an interim clearance?

4 A. Well, you apply for a clearance, and within 90 days,

5 they usually give you a temporary clearance.

6 Q. And how many programmers got a temporary clearance?

7 A. One.

8 Q. And who was that?

9 A. Barjinder.

10 Q. And when did you get your clearance?

11 A. Interim or final?

12 Q. Interim.

13 A. March or April of 2004.

14 Q. 2003?

15 A. '3. Excuse me.

16 Q. And when did you get your final?

17 A. I believe it was sometime in the summer of 2004.

18 Q. Okay. In August of 2003, were you given certain tapes

19 by the government?

20 A. Yes, yes.

21 Q. And did those tapes and what was on them precipitate a

22 lot of discussion with Mr. Trepp?

23 MR. PEEK: Objection, Your Honor. Again, it's leading

24 and, I think, lacks foundation.

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1 THE COURT: Well --

2 MR. PEEK: Assumes facts not in evidence.

3 THE COURT: He asked him did it precipitate a

4 conversation. That may be a little bit leading.

5 MR. PEEK: It's also speculative as to whether the

6 tapes themselves --

7 THE COURT: Did you give him the tapes, and was there

8 a conversation about the tapes after you gave him the tapes?

9 THE WITNESS: I received tapes, and there was

10 something on the tapes that was of interest.

11 THE COURT: All right. And did you have a

12 conversation with Mr. Trepp about that?

13 THE WITNESS: Yes.

14 THE COURT: All right. Go ahead.

15 BY MR. FLYNN:

16 Q. And did the nature of the tapes and what was of

17 interest to this agency relate to the conversation you had with

18 Mr. Trepp?

19 MR. PEEK: Again, Your Honor, this goes back to not

20 being allowed to cross-examine because this is -- again, you're

21 going to say this is top secret, national secret, I can't talk

22 about it, talk about it, so --

23 THE COURT: Well, we don't know if he's going to say

24 that. I want to see what he says, and then we'll see where we

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1 go with that.

2 I mean, one of the things that occurs to me is that

3 where one side of a case or the other relies upon a privilege,

4 then I can take that into consideration with regard to whether

5 or not the other side has been provided with the information

6 they're entitled to be provided with.

7 BY MR. FLYNN:

8 Q. Having that in mind, Your Honor -- did you share what

9 was on the tapes with Mr. Trepp?

10 A. Yes.

11 Q. And then did you have a conversation about money or

12 your ownership or interest in eTrepid Technologies with

13 Mr. Trepp?

14 A. And what time frame is this, again?

15 Q. At the time the tapes were given.

16 A. Yes.

17 Q. And what was that conversation?

18 A. I wanted to know how I was going to be compensated.

19 Q. If you did the work on the tapes?

20 A. That's correct.

21 Q. And what did he say?

22 A. He would work it out.

23 Q. Did you go ahead and do the work on the tapes?

24 A. Yes.

44 (Pages 170 to 173)

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1 Q. And whose technology was used to do the work on the  
2 tapes?

3 A. Well, there were two pieces. The piece of facial  
4 recognition and video recognition was eTreppid's. The anomaly  
5 detection was mine.

6 Q. And how much was being paid during that time frame?

7 A. Well, I think they -- I think that was close to  
8 200,000.

9 Q. After doing the work on the tapes, did you, as the  
10 chief technology officer and then as the owner of the anomaly  
11 detection software, make any conclusions about the reliability  
12 of your software?

13 A. I thought it was very reliable.

14 MR. PEEK: I'm sorry. What?

15 THE WITNESS: It was very reliable.

16 BY MR. FLYNN:

17 Q. Did you have any conversation with Mr. Trepp about  
18 that reliability?

19 A. I don't think initially at that exact time frame.

20 Later on, I think we did.

21 Q. And what was that conversation?

22 A. He wanted to know how confident I was that the data  
23 was correct, and I told him that I believed it was very  
24 accurate.

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1 Q. And did you ever have a conversation about the value  
2 of your technology at that point?

3 A. Sometime in 2004, is that --

4 Q. Yes.

5 A. Yeah. Well, he told me he asked for a billion dollar  
6 bond from the U.S. Government.

7 Q. And did you have a discussion with him about how much  
8 he wanted to sell the technology for?

9 A. I believe initially it was 500 million.

10 Q. And did you have a discussion with him about what part  
11 of the 500 million would belong to you and what part would  
12 belong to him?

13 A. Yes.

14 Q. And what was that conversation?

15 A. I was concerned that I was going to get my fair share  
16 of that.

17 Q. All right. Now, in September of 2004, was the  
18 government contract -- that phase of the government contract  
19 coming to an end?

20 A. I believe at September 31st, that -- the next phase  
21 was going to be completed.

22 Q. And did you have a conversation with Mr. Trepp about  
23 extending the contract for another three months?

24 A. The people that were here from the government stated

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1 they wanted to extend it.

2 Q. And did you have a conversation with Mr. Trepp about  
3 extending it?

4 A. Yes.

5 Q. What was that conversation?

6 A. He wasn't going to.

7 Q. And did you have a conversation with him as to why he  
8 wouldn't?

9 A. At the time -- the initial time is that we wanted more  
10 money. We, meaning eTreppid, had wanted more money and  
11 Mr. Trepp wanted to move on to some other work.

12 Q. And so did you go forward and do -- continue -- did  
13 you continue processing work for this particular department of  
14 the government?

15 A. We continued processing, I believe, until after  
16 Thanksgiving of 2004.

17 Q. And were you using your anomaly detection software?

18 A. Yes.

19 Q. And did you have a conversation with Mr. Trepp in the fall  
20 of 2004 about the fact that it was your software that you  
21 owned?

22 A. Yes.

23 Q. Now, at some time, did you have a conversation with  
24 the government from this particular department about protecting

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1 the software with intrusion devices?

2 A. Well, early on, they told us --

3 MR. PEEK: Objection, Your Honor. Hearsay.

4 THE COURT: Well, I'm going to allow it. I've allowed  
5 quite a bit of hearsay in this case anyway. I'll determine  
6 whether or not it's been being offered for the truth of it or  
7 not, or whether it's being offered to explain the question that  
8 was asked.

9 Go ahead.

10 THE WITNESS: I believe, in early 2004, they suggested  
11 what they wanted to do to protect the systems.

12 MR. PEEK: Could we have who the "they" is.

13 THE WITNESS: The government.

14 MR. PEEK: Can we have Air Force, person, individual,  
15 name.

16 THE WITNESS: Not the Air Force, the other group.

17 MR. PEEK: What was the name of the other group?

18 THE WITNESS: I'm not going to say.

19 MR. PEEK: That's my problem again, Your Honor, hiding  
20 behind the privilege.

21 THE COURT: I understand.

22 MR. FLYNN: We're not hiding behind anything, Your  
23 Honor. We'll allow Mr. -- we'll enable a number of procedures.  
24 Either it goes to a judge who has a security clearance on this



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1 level, which is called for under the act, or we'll enable  
2 Mr. Montgomery, Mr. Trepp to go into chambers so the Court can  
3 verify it, or we'll enable -- we'll allow it to go over to  
4 federal court. Your Honor, we're not hiding behind anything.

5 THE COURT: I don't know how it's going to go over to  
6 federal court. It's already been bumped out once. All I'm  
7 saying all day is cite me the statute that says that he can  
8 say, "I'm not going to answer the question." I'm perfectly  
9 happy with the idea that if he possesses information that's  
10 classified, he probably shouldn't, and has probably been told  
11 not to say it. But I need some authority so that I can make a  
12 reasonable, decent decision on this issue without speculating  
13 about it. Now --

14 BY MR. FLYNN:

15 Q. Under the contract you signed with the government,  
16 were you made an agent of the government in connection with  
17 this software technology?

18 A. I believe so.

19 MR. PEEK: Your Honor, again, I move to strike that.  
20 He said, "I believe so," "I don't have the contract," "I don't  
21 know what it says." I can't cross-examine him on that. He  
22 says, "I didn't get a copy of it." Everybody else had it.

23 THE COURT: I'm not even sure that this relates to any  
24 of the issues in the case. And I'm not -- you know, I'm not

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1 going to tell you how to try your case. But to me, I'm not  
2 concerned about what it says or what it doesn't say. I don't  
3 even care what agency it is.

4 MR. PEEK: I care, Your Honor, because of the  
5 inference here that I was directed to put intrusion software,  
6 and it is the intrusion software that, if there was any  
7 deletion, that deleted all of this. When we and get an  
8 affidavit from the Air Force, who is managing this, a lot of  
9 these contracts --

10 BY MR. FLYNN:

11 Q. Mr. Montgomery, in connection with this particular  
12 work and the intrusion devices, did the Air Force manage this  
13 aspect of it?

14 A. No.

15 Q. And did you put the intrusion devices on?

16 A. Yes.

17 MR. PEEK: Same objection, Your Honor.

18 BY MR. FLYNN:

19 Q. When did you put the intrusion devices on?

20 A. I believe it was February of 2003.

21 Q. And what are the intrusion devices? Explain to the  
22 Court how they work. Is that classified?

23 A. I don't really know whether it is or not, to be honest  
24 with you.

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1 Q. Well, generically, can you describe to the Court what  
2 happens if someone tries to access it?

3 A. The government group was very concerned that someone  
4 would walk in and take a computer out of the building,  
5 physically take it out. And since the room that we had in the  
6 building was not big enough to hold all the computers, they  
7 wanted some form of protection so that those computers could  
8 not be taken out of the building and accessed.

9 Q. And how -- and did you load these devices onto these  
10 computers?

11 A. Yes. It's software.

12 Q. And how does the software, basically, work? Does  
13 it -- what does it do?

14 A. Well, it's designed to get a response over some period  
15 of time, and if the response hasn't been given to it or the  
16 responses are incorrect, it will purge itself.

17 Q. And did anyone at eTreppid know that that's how this  
18 system worked?

19 A. I don't think so.

20 Q. I mean, in terms of the details of the technology.

21 A. No, no.

22 Q. In terms of the generic nature of the fact that it  
23 existed, did Mr. Trepp know?

24 A. I don't know if he did or not. I suspect he talked to

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1 the same government people that I did, that he might have  
2 known.

3 Q. Now --

4 THE COURT: Let me just stop and ask a question.  
5 Do the lawyers know what agency we're talking about?

6 MR. FLYNN: Yes.

7 THE COURT: Do you know?

8 MR. PEEK: No, I don't.

9 THE COURT: Your client has not told you? You don't  
10 know? You don't know?

11 MR. PEEK: I -- I don't know. I will ask Mr. Trepp.

12 MR. FLYNN: I do, Your Honor.

13 (Whereupon, Mr. Peek has a conversation with Mr. Trepp  
14 off the record.)

15 MR. PEEK: Yes, I do know.

16 THE COURT: All right. Approach.

17 (A discussion was held at the bench out of the hearing  
18 of the reporter.)

19 THE COURT: All right. Go ahead. I'm sorry for the  
20 interruption.

21 MR. FLYNN: Thank you, Your Honor.

22 BY MR. FLYNN:

23 Q. Let's fast-forward a little bit. The work ended with  
24 this particular agency at some point in time; is that correct?

46 (Pages 178 to 181)

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1 A. Yes.  
 2 Q. And that was after Thanksgiving of 2004?  
 3 A. Yes.  
 4 Q. And were there continued negotiations with that  
 5 department thereafter?  
 6 A. My understanding was that that group wanted the  
 7 Air Force to get involved.  
 8 Q. And during 2004 -- just yes or no -- were there  
 9 individuals in the U.S. Government at the highest levels at  
 10 eTreppid Technologies?  
 11 A. Yes.  
 12 THE COURT: What is "the highest levels"? Does that  
 13 mean was President Bush there? That doesn't mean anything to  
 14 me.  
 15 BY MR. FLYNN:  
 16 Q. Was Warren Trepp there?  
 17 A. Yes.  
 18 Q. So he knows who these individuals are?  
 19 A. Yes.  
 20 Q. Now, at the end of 2004, did you and Mr. Trepp begin  
 21 to have discussions -- heated discussions about who owned --  
 22 strike that -- about how you were going to be paid going  
 23 forward if there were future governmental contracts?  
 24 MR. PEEK: Objection. Leading, Your Honor, as to

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1 "heated." They had discussions.  
 2 BY MR. FLYNN:  
 3 Q. Okay. Did you have discussions?  
 4 THE COURT: All right. Yeah.  
 5 THE WITNESS: Yes.  
 6 BY MR. FLYNN:  
 7 Q. And how would you characterize the development of the  
 8 relationship towards the end of 2004 and going into 2005, with  
 9 Mr. Trepp?  
 10 A. It was getting strained.  
 11 Q. And what was the nature of the conflict?  
 12 A. Well, I had been promised, um, to get this worked out,  
 13 and it never gets worked out.  
 14 Q. And did Mr. Trepp ever dispute that you owned the  
 15 anomaly detection software?  
 16 A. No.  
 17 Q. In late November of 2005, did you have a conversation  
 18 with Mr. Trepp about how much had been paid by the government  
 19 in connection with these various top secret projects?  
 20 A. Yes.  
 21 Q. And how much did Mr. Trepp say had been paid?  
 22 A. I think he said around 10 to 12 million.  
 23 Q. What was your -- your understanding of how much had  
 24 been paid?

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1 A. In the two years?  
 2 Q. Yes.  
 3 A. I think more closer to 18 million.  
 4 Q. And in early December of 2005, did you have a  
 5 conversation of how much was in the bank and you wanted to see  
 6 the bank statements?  
 7 A. Yes.  
 8 Q. What did you say to him?  
 9 A. "I want to see the bank statements."  
 10 Q. And what did he say?  
 11 A. He never showed it. He didn't say anything. He never  
 12 showed it.  
 13 Q. And after this conversation in early December of 2005,  
 14 did he say anything about giving you any money?  
 15 A. Well, I told him I needed a couple hundred grand. Is  
 16 that the question?  
 17 Q. Yeah.  
 18 A. Yes.  
 19 Q. So what did he do?  
 20 A. In December, I don't remember the exact date. It must  
 21 have been around -- I think around the 10th or something, he  
 22 gave me either 125 or 150 thousand.  
 23 Q. And what was your understanding as to what that was  
 24 for?

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1 A. Once again, he said he'll work it out.  
 2 Q. And let me show you Exhibit 18. Did you have a  
 3 conversation about Exhibit 18 with Mr. Trepp in the end of  
 4 December of '05?  
 5 A. He brought me two documents, this being one of them --  
 6 I don't remember the other one -- and told me that he wanted me  
 7 to sign it.  
 8 Q. And what did you say?  
 9 A. "I won't sign it."  
 10 Q. And is that your signature on Exhibit 18?  
 11 A. No.  
 12 Q. Did you ever sign any document like that in front of  
 13 this individual, Mr. Bora?  
 14 A. No.  
 15 Q. Who is Mr. Bora?  
 16 A. Gellay's (phonetic), which is Warren's wife's brother.  
 17 Q. And based on your knowledge of your own signature, is  
 18 that signature forged?  
 19 A. It's not mine. I didn't sign it.  
 20 MR. FLYNN: And at some point, Your Honor, I'd ask the  
 21 Court to compare that signature to the signatures on all the  
 22 other documents with Mr. Montgomery's handwriting that have  
 23 been introduced.  
 24 MR. PEEK: Your Honor, I think that --

47 (Pages 182 to 185)

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1 THE COURT: I've already done that. But my question  
2 is, where is the original?

3 MR. PEEK: We have the original, Your Honor. I guess  
4 we're going to have to submit it to forensics now, questioned  
5 document examiner, now that Mr. Flynn's client denies, contrary  
6 to the testimony of Mr. Trepp, signing it and that of the  
7 witness who witnessed it.

8 THE COURT: Well, I can't tell you what to do.

9 MR. PEEK: I'm not going to do it today. I don't  
10 think I need to do it for this purpose.

11 THE COURT: I know what I would do.

12 MR. PEEK: I certainly wouldn't ask the Court to  
13 compare it to others.

14 THE COURT: I think it's within the layperson's  
15 ability to compare signatures and make judgments, but not --  
16 I'm not really going to engage in that exercise for that  
17 purpose. I was just curious.

18 MR. PEEK: Are we about done here?

19 BY MR. FLYNN:

20 Q. Mr. Montgomery, you've heard all of this testimony  
21 about the various deletions during the January period in 2006,  
22 files missing, et cetera, raid boxes gone.

23 Would you describe to the Court what you did in your  
24 relationship with eTreppid Technologies in January of 2006 in

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1 connection with any of the software that was present in the  
2 company.

3 A. I got called -- Mr. Trepp was getting ready to leave  
4 on a cruise. I don't remember which week that was, if it's the  
5 week of the 8th. And I planned on taking the week off because  
6 he was going to be gone also.

7 And I got a call on, I think, Monday morning from  
8 Mr. Trepp saying that I need to come down to the building.

9 Q. And what was the nature of that discussion other than  
10 that? Was there anything else?

11 A. No, he just said, "You need to come down here right  
12 now."

13 Q. And what happened?

14 A. I had another commitment, and I couldn't come down  
15 that day.

16 Q. So then what happened?

17 A. He called me either -- he left a message on my phone  
18 that night, saying I needed to come down there tomorrow  
19 morning.

20 Q. Did he tell you why?

21 A. No, he just said it was important, I needed to come  
22 down.

23 Q. Did you go down the next day?

24 A. Yes.

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1 Q. And then what happened?

2 A. I entered through the warehouse, and I saw all of  
3 these people going through all the hard drives.

4 Q. Okay. What date was that?

5 A. It's the -- it would be the Tuesday. I don't know --  
6 I don't know which day it is. January.

7 Q. The Tuesday -- the second week in January?

8 A. Yes, the second week in January.

9 Q. And did you have any foreknowledge that these people  
10 would be going through the hard drives?

11 A. No.

12 Q. Were they going through the hard drives in this area  
13 here (indicating), this area near --

14 A. Yes, yes.

15 Q. -- on Exhibit I --

16 A. Yep. Yes.

17 Q. -- which we've called Dennis's, Mr. Montgomery's, work  
18 area?

19 A. Work area, yes.

20 Q. And were those all government computers?

21 A. Yes.

22 Q. What was the value of those computers?

23 A. My guess, 350,000-plus.

24 Q. And when were those computers brought in to eTreppid?

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1 MR. PEEK: Counsel, I can't see the witness answer the  
2 question.

3 THE WITNESS: December 2003, I believe, or  
4 January 2004.

5 BY MR. FLYNN:

6 Q. And did a particular branch of the government bring  
7 those in?

8 A. I -- we purchased them on behalf of the government.

9 They were government computers, and we purchased them, one from  
10 each group. So I don't know which group belonged to which one.

11 Q. Did -- at some point, did the government bring in  
12 computers that you didn't purchase?

13 A. Yes.

14 Q. When did they bring those computers in?

15 A. I believe January of 2004.

16 Q. And what was the value of those computers?

17 A. Three million.

18 Q. And --

19 MR. PEEK: Objection. Move to strike. There's no  
20 foundation for this testimony that the value of the computers  
21 was \$3 million.

22 MR. LOGAR: What difference does it make? That's not  
23 an objection.

24 THE COURT: Hold on. Hold on. Hey, guys, listen to

48 (Pages 186 to 189)

Page 190

1 me. Hey, no, listen. We're getting late here tonight. It's  
2 easy to get carried away and have exchanges, but I want to  
3 maintain reasonable order in here. So if you have something to  
4 say, say it to me.

5 And likewise to you, if you have something to say, say  
6 it to me.

7 So what we'll do --

8 MR. PEEK: My objection, Your Honor, was lack of  
9 foundation and qualification as to what the value is, as well  
10 as the relevance here.

11 THE COURT: All right. Well, first of all, what is  
12 the basis for your knowledge of the value of the computers?

13 THE WITNESS: You're asking me, Your Honor?

14 THE COURT: Yes.

15 THE WITNESS: I was told that was the price by the  
16 government.

17 MR. PEEK: Objection. Hearsay, Your Honor.

18 THE COURT: I don't know that I see the relevance.  
19 What's the relevance?

20 MR. FLYNN: The relevance, Your Honor, is that the  
21 government brought those computers in because of  
22 Mr. Montgomery's ownership of the anomaly detection software.

23 THE COURT: Well, that's your conclusion. But I mean,  
24 I don't know that there's any evidence here from which we can

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1 conclude that that's not hearsay.

2 BY MR. FLYNN:

3 Q. Mr. Montgomery, why did the government bring the  
4 computers in?

5 A. They wanted us to run the anomaly detection software  
6 on all the computers.

7 MR. PEEK: Again, Your Honor, objection. That's  
8 hearsay. That calls for hearsay from the government as to why  
9 they were there. It had to have come from a hearsay statement  
10 from a government official, as opposed to pursuant to a  
11 contract.

12 THE COURT: I understand that, but why they brought  
13 them is pretty apparent to me, to run the programs. But the  
14 question I was concerned about was, why is it -- the cost of  
15 those programs, why is that relevant? That was the question I  
16 had.

17 BY MR. FLYNN:

18 Q. The magnitude of the work that was being done with  
19 regard to anomaly detection that warranted the contract price  
20 had to do with how quickly you could process the information;  
21 is that correct?

22 A. Yes.

23 Q. Now, continue with your -- you had no forewarning of  
24 the fact that the people in eTrepid would be trying to access

Page 192

1 the hard drives?

2 A. No.

3 Q. And were they also in this area called the private  
4 room (indicating)?

5 A. Not that I know of. I only walked in through the  
6 warehouse up the back stairs to Mr. Trepp's office.

7 Q. And did you have a conversation with Mr. Trepp about  
8 what these people are doing with these hard drives, would do  
9 with the software?

10 A. Yes.

11 Q. What did you tell them?

12 A. I was surprised that he was letting people with no  
13 classification dismantle disk drives.

14 Q. And what did he say?

15 A. He's looking for the software.

16 Q. And who did you see working on this -- on these hard  
17 drives?

18 A. Michael Salvetek, Jim Bauder, Jesse Anderson,  
19 Venkata Kalluri.

20 Q. Did any of these people have government clearances?

21 A. Jim, I believe -- or, Jesse, I believe, did; the  
22 others, no.

23 Q. And when you confronted them with the fact that they  
24 weren't allowed or permitted under the contract with the

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1 government to do that, what did he say?

2 A. That he's ordering them to do it, Mr. Trepp is.

3 Q. And did he tell you why?

4 A. No.

5 MR. PEEK: Your Honor, can we move on? I'm going to  
6 object. This is just dragging on and dragging on to be a  
7 filibuster, and denying me the opportunity to cross-examine.  
8 It's now 8 o'clock.

9 MR. LOGAR: Is there an objection, Counsel, to your  
10 statement?

11 THE COURT: Again, conversation -- I want conversation  
12 direct to the bench.

13 MR. LOGAR: It's just speaking objections.

14 THE COURT: I understand that. But I really am having  
15 a lot of difficulty seeing how this ties into the issue here.  
16 We're almost at an hour now for your 20-minute examination, so  
17 please hurry up.

18 BY MR. FLYNN:

19 Q. Did what they do destroy any of the software in any of  
20 the source codes?

21 A. Possibly, yes.

22 Q. The source codes with regard to anomaly detection  
23 software, where are they?

24 A. In the building.

49 (Pages 190 to 193)



Page 194

1 Q. And how many lines of code do they -- exist,  
 2 Mr. Montgomery?  
 3 A. Half a million-plus.  
 4 Q. And do you know whether, when they tried to access the  
 5 software, any of those lines of code were destroyed?  
 6 A. It could have been.  
 7 Q. And are those lines -- are the source codes to access  
 8 those lines of code also in your head?  
 9 A. Yes.  
 10 Q. And are those the same -- is that the same anomaly  
 11 detection software that you copyrighted back in 1982?  
 12 A. Yes.  
 13 Q. And explain to the Court why that is the case, namely,  
 14 that they're identical.  
 15 A. Well, I mean, I'm the one that did all the original  
 16 work on the anomaly detection software.  
 17 Q. Did you destroy or take any files or hard drives or  
 18 anything from eTreppid Technologies?  
 19 A. No.  
 20 Q. And is there anyone at eTreppid Technologies today, to  
 21 your knowledge, that has the capability to determine what's  
 22 there and what isn't there in connection with the government  
 23 contract on anomaly detection?  
 24 A. I don't think so.

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1 Q. So they wouldn't even know how to do it?  
 2 A. That's correct.  
 3 Q. Have you heard any testimony from Mr. Venable or  
 4 Dr. Sun or anyone else that would indicate they have any  
 5 knowledge or expertise whatsoever, or the expert that was  
 6 called, as to how to access the anomaly detection codes inside  
 7 eTreppid today?  
 8 A. No.  
 9 Q. Are you the only one?  
 10 A. I don't know that for a fact, but I would suspect  
 11 that's probably the case.  
 12 Q. In connection with your conversations with Mr. Trepp  
 13 in the presence of governmental agents, did some of those  
 14 conversations relate to the fact that you were the only person  
 15 on the planet that could do this anomaly detection?  
 16 A. They just want -- I don't know if they said it exactly  
 17 like that, but up until that point, we were the only ones that  
 18 were able to get out these kinds of results.  
 19 Q. Do you know of anyone else that, you know, deleted  
 20 files at eTreppid Technologies?  
 21 A. Well, all the programmers, from time to time, did that  
 22 on their own.  
 23 Q. But do you know of anyone who deleted files who  
 24 shouldn't have been deleting files?

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1 A. No.  
 2 Q. Did anyone control your work, ever, at eTreppid  
 3 Technologies?  
 4 A. What do you mean by that? That's --  
 5 Q. With regard to your -- first, your data compression  
 6 type of work, did, say, anyone instruct you or supervise you on  
 7 how to do that type of work?  
 8 A. No, no.  
 9 Q. With regard to your anomaly detection work, did anyone  
 10 ever instruct you or supervise you in any way on how to do that  
 11 work?  
 12 A. No.  
 13 Q. And in regard to the anomaly detection work, that was  
 14 work that you distinctly understood as far back as 1982; is  
 15 that correct?  
 16 A. Yes.  
 17 Q. Did anyone else have the skill at eTreppid  
 18 Technologies to do the --  
 19 MR. PEEK: Objection. Lacks foundation as to how he  
 20 can evaluate somebody else's skill, given the fact he only has  
 21 an associate's science degree.  
 22 THE COURT: Well, I think you could evaluate it based  
 23 upon your experience, education, training, et cetera. But the  
 24 better question, I think, is how does he know what their level

Page 197

1 was? That's the thing I'm concerned about.  
 2 BY MR. FLYNN:  
 3 Q. Based on all your years in working with all these  
 4 people, are you aware what skill levels these various  
 5 individuals had that were computer programmers at eTreppid?  
 6 A. Yes.  
 7 Q. Did anyone have the skill level other than you to do  
 8 anomaly detection?  
 9 A. Probably not.  
 10 Q. And the instruments and the tools that were used by  
 11 you to do the anomaly detection, was that based on the  
 12 copyrights that you --  
 13 A. Yes.  
 14 Q. -- filed back in 1982?  
 15 A. Sorry. Yes.  
 16 Q. With regard to the intrusion technology,  
 17 Mr. Montgomery --  
 18 A. Yes.  
 19 Q. -- was there some type of a system set up by you that  
 20 required a response, and if it didn't get a response, it would  
 21 start self-destructing?  
 22 A. Yes.  
 23 Q. How did that work?  
 24 A. You set the time frame, and you had to respond within

50 (Pages 194 to 197)

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1 that period of time frame. And if you didn't, it would purge  
2 itself.

3 Q. And as you sit here today, do you have any  
4 understanding as to whether that may have occurred at eTreppid  
5 Technologies?

6 A. Well, since I was locked out of the building and I  
7 could never go into it, I suspect it probably happened.

8 MR. FLYNN: That's all I have, Your Honor.

9 THE COURT: All right. Let me just stop and ask a  
10 question, which is probably going to not make any sense. But  
11 there's been an amended complaint filed on the 1st of February.  
12 Obviously, time to answer it hasn't expired, but there hasn't  
13 been an Answer filed, at least as far as I can see.

14 MR. PEEK: There's an Answer to the earlier, but not  
15 to the amended one, that's correct.

16 THE COURT: I didn't find that in my file, but was --  
17 were there any counterclaims?

18 MR. PEEK: There is a counterclaim, Your Honor, for  
19 copyright infringement contained within the counterclaim.

20 THE COURT: All right. Let me ask you a question.

21 During the time that eTreppid was being paid for  
22 this -- for the use of this copyrighted material by the  
23 government, which you claim belongs to you, did you ever object  
24 to the government and say, wait a minute, that's my material,

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1 that's not eTreppid's material?

2 THE WITNESS: I don't recall, Your Honor, if I did or  
3 not.

4 THE COURT: Well, go ahead, Mr. Peek. I was going to  
5 open my big mouth about something.

6 MR. PEEK: I'm happy to hear from the Court. If it  
7 will shorten the proceeding, I'm happy to hear from the Court.

8 THE COURT: Well, let me tell you, counsel for both  
9 sides, kind of how I think I'm seeing this, but I'm prepared to  
10 be persuaded otherwise. But maybe that will be helpful. I  
11 know, when I was a practicing lawyer, I kind of liked to know  
12 sometimes what that judge was thinking about. Not always happy  
13 to know, but I kind of wanted to.

14 And it seems to me that the agreement that was  
15 originally entered may or may not cover the technology that  
16 we're talking about. But certainly, at some point in time, by  
17 conduct or agreement, oral or by conduct and by performance, it  
18 was agreed that eTreppid could market this technology and  
19 didn't market this technology to this agency of government and  
20 that all the parties acknowledged that it was eTreppid's to  
21 market.

22 The problem arises with regard to a further agreement  
23 or further compensation or other issues that may be the subject  
24 of a very meritorious counterclaim. Whether it's meritorious

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1 or not, I have no idea. But I don't -- at this point in time,  
2 I'm not -- it would appear to me that the technology was indeed  
3 conveyed to eTreppid to market and sell to the government and  
4 that the government paid eTreppid for that.

5 Now, if there was an agreement that there would be  
6 compensation for it later and that agreement wasn't honored,  
7 that's part of the counterclaim. If there's an agreement that  
8 copyrights were infringed, that's part of the counterclaim.

9 But as to the ownership of it, it would seem to me,  
10 like I said, by conduct, by oral understanding, that it was  
11 agreed, yeah, this belongs to eTreppid and I'm going to get  
12 compensated for it later. That's where the counterclaims come  
13 in. So tell me where I'm wrong about that.

14 MR. FLYNN: Your Honor, with all due respect, black  
15 letter law -- and we have a brief on it -- says that no  
16 copyright --

17 THE COURT: Title 17, right?

18 MR. FLYNN: -- no copyright can be given under these  
19 circumstances without a written assignment.

20 The closest they can get is the Work For Hire  
21 Doctrine. We have -- a state court is absolutely preempted,  
22 under case law statute, from using trade secret, from using  
23 conduct, from using implied agreement, to breach the provisions  
24 of the copyright act. The most that they could get is a

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1 nonexclusive, oral license under the conduct.

2 And as I say, Your Honor, we have the brief. We're  
3 ready to submit the brief to the Court.

4 THE COURT: Oh, it hasn't been submitted to me yet?  
5 I'm familiar with Title 17.

6 MR. FLYNN: It hasn't been submitted.

7 THE COURT: And I think I know the section that you're  
8 talking about. But I mean, if that's the case, what the heck  
9 are we doing in state court? Why aren't you guys in federal  
10 court?

11 MR. FLYNN: The only reason we're here is the Court  
12 simply said, you can't remove it based on the counterclaim.  
13 But we've already filed over in the federal court.

14 So, no matter what this Court does --

15 THE COURT: I'm wasting my time?

16 MR. PEEK: You're not wasting your time, Your Honor.

17 THE COURT: Well, why don't you just let me do it, and  
18 then you can go to federal court and do whatever federal court  
19 does.

20 MR. FLYNN: Your Honor, because it's just so  
21 flagrantly incorrect, under the copyright law, for a state  
22 court to -- in effect, to give away a copyright, which is the  
23 clear basis of the record at this point in time, with no  
24 reputation, with no meeting of any burden of proof to the

51 (Pages 198 to 201)

Page 202

1 contrary. Based on all the case law and the brief we've got  
2 for the Court, it simply cannot be done.

3 THE COURT: All right. See, I'll have to consider  
4 that. I mean, I'm aware of Title 17. I'm aware, I think, of  
5 the section you're talking about.

6 I'm just looking at this from the standpoint of  
7 regular contract. If it can't be done, then we go back to the  
8 issue, and I determine whether or not, in fact, it was in  
9 writing and whether the writing is sufficient to convey that  
10 and whether conduct can supplement it or expand upon that  
11 agreement. Those are the things that I'll have to take into  
12 consideration. And I'm not necessarily going to decide it now;  
13 I'm just telling you the contents in my head.

14 MR. FLYNN: Yes, Your Honor. See, on that point,  
15 we're -- the contract clearly says only CD Number 1 has been  
16 given. I do not see how you can possibly get outside of that  
17 where you're not dealing with an employee, you're dealing with  
18 a founder and a principal and an independent contractor.

19 THE COURT: Well, that's something I'll have to decide  
20 when I take that into consideration.

21 MR. PEEK: And a fiduciary duty as a member of the  
22 LLC, Your Honor, with partnership fiduciary responsibilities.

23 May I go ahead and cross-examine?

24 THE COURT: Yeah, go ahead.

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1 MR. PEEK: I understand where the Court is. I may be  
2 able to shed some light on this, as well.

3 THE COURT REPORTER: May I say, for the record, I'm  
4 getting really tired.

5 MR. PEEK: I'll be slow, Ms. Vohl. I don't agree with  
6 that, but -- I don't believe that.

#### CROSS-EXAMINATION

10 BY MR. PEEK:

11 Q. Let's talk a little bit, Mr. Montgomery, about, as you  
12 say, the anomaly detection, which you say you copyrighted as  
13 part of your work at Computermate; is that correct?

14 A. Yes.

15 Q. And that was related to blood gas analysis?

16 A. Well, it related to blood gas analysis.

17 Q. And the blood gas -- the blood is being drawn from  
18 time to time by techs and tested as to what its gases are?

19 A. Yes.

20 Q. And those gases have to be within a certain range, do  
21 they not, have a certain medical range where they might show  
22 that there's something wrong with the patient?

23 A. Is that a question?

24 Q. Yes. Is that correct?

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1 A. Yes.

2 Q. And your anomaly detection portion of the blood gas  
3 was, you said that the range for certain levels of blood gases  
4 would be a percentage for hydrogen, oxygen, nitrogen, carbon  
5 dioxide, things of that nature?

6 A. I don't understand your question.

7 Q. Well, you're determining, are you not, whether or not  
8 a person's blood gases contain more hydrogen, carbon dioxide,  
9 or oxygen than they are supposed to?

10 A. No.

11 Q. What are you testing for, then? What is the anomaly?

12 A. I've never tested for hydrogen. You just used  
13 hydrogen as an example.

14 Q. Okay. But you were testing for other blood gases, are  
15 you not?

16 A. Yes.

17 Q. And there are medical ranges for blood gases, are  
18 there not?

19 A. Yes.

20 Q. And if those blood gases fall outside of those ranges,  
21 that would be an anomaly; is that correct?

22 A. No. That would be abnormal.

23 Q. Well, what's the anomaly, then, that is being tested,

24 the anomaly detection that you're determining with your blood

Page 205

1 gas analysis?

2 A. You're shooting light through blood, and a spectrum is  
3 being produced. And that spectrum, depending on which value  
4 you're looking for, determines the spec- -- you look for each  
5 of the variables in a different range in the spectrum.

6 Q. You're looking for, as I understand it, certain gases?

7 A. Patterns.

8 Q. Patterns?

9 A. Patterns.

10 Q. What are the patterns?

11 A. Well, a gas shows up at a certain spectrum and has a  
12 certain appearance.

13 Q. Can you show me within Exhibit 19 where it talks about  
14 anomaly detection?

15 A. You want me to read this whole thing?

16 Q. I want you to -- it's your book, is it not?

17 A. It's been 20 years.

18 Q. Oh, so you haven't looked at this book for 20 years,  
19 Mr. Montgomery; is that correct?

20 A. No.

21 Q. Well, what -- when was the last time you looked at  
22 this book, sir?

23 A. Two weeks ago.

24 Q. When you looked at it two weeks ago, did you find the

52 (Pages 202 to 205)

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1 phrase "anomaly detection" anywhere within it?  
 2 A. I don't recall if I did or not.  
 3 Q. Is there anything in there that you would characterize  
 4 as anomaly detection? If it is, point us to it.  
 5 A. The software.  
 6 Q. Well, point us to someplace in that book that  
 7 describes anomaly detection.  
 8 A. I'm not sure this book describes anomaly detection.  
 9 Q. Well, what about Exhibit 21, which is part of -- came  
 10 out of that -- or Exhibit 20, I think, that came out of that?  
 11 A. The copyrights?  
 12 Q. No, no. The Exhibit 20, which was the excerpts from  
 13 that, where in those documents that are excerpts from  
 14 Exhibit 19 does it describe, as you say, anomaly detection?  
 15 A. The center screen is the output of the determination  
 16 of that anomaly.  
 17 Q. Okay. Can you then tell me -- point me, then, to that  
 18 exhibit.  
 19 A. Am I done with this book?  
 20 Q. Pardon?  
 21 A. Page 22 in the middle.  
 22 Q. Page 22?  
 23 A. Yep.  
 24 Q. Okay. So this is what you describe as being anomaly

Page 207

1 detection?  
 2 A. Excuse me. 32.  
 3 Q. Okay. I apologize. 32. Well, what's on 22?  
 4 A. Well, the blood hadn't been ejected yet.  
 5 Q. Oh, okay. So on 32, there is something there that you  
 6 say relates to anomaly detection. Where do we see that?  
 7 A. You -- you see the value that is displayed, tells you  
 8 the peak of the detection of the anomaly, and that peak has a  
 9 qualifying amount.  
 10 Q. Where am I reading that?  
 11 A. Well, see, a number like 29, as an example, for  
 12 bicarbonate.  
 13 Q. For what?  
 14 A. For HCO<sub>3</sub>.  
 15 Q. Is it in the middle column?  
 16 A. Yes, 29.1.  
 17 Q. 29.1?  
 18 A. Yeah.  
 19 Q. That's a detection of an anomaly?  
 20 A. That gives you the size of the anomaly, that's  
 21 correct.  
 22 Q. How do I know that's the size of an anomaly?  
 23 A. I just told you it was.  
 24 Q. Oh, just because you tell me it was.

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1 It says, over here, if I read across the column on  
 2 Exhibit 20 -- the middle column has no heading; it just says  
 3 "Coming 178-3 1/1/76." Is "1/1/76" the date? Is that a date?  
 4 A. I believe it looks like a date.  
 5 Q. Okay. And then HCO<sub>3</sub> -- what does HCO<sub>3</sub> stand for?  
 6 A. Bicarbonate.  
 7 Q. And then it says "29.1." How do we know that's an  
 8 anomaly?  
 9 A. Well, we're looking for --  
 10 Q. Tell me this --  
 11 A. Do I get to answer?  
 12 Q. Yeah.  
 13 A. We're looking for the pattern in the spectral analysis  
 14 that relates to bicarbonate.  
 15 Q. Where do we see that in this that shows --  
 16 A. You see the result of it.  
 17 Q. What's that?  
 18 A. You see the end result of it.  
 19 Q. How do I know that that was part of the spectral  
 20 analysis and was an anomaly detection from this document, or  
 21 are you reading from the book?  
 22 A. I don't remember from the book. We put the  
 23 original -- what the original patterns looked like.  
 24 Q. So how is the Court going to tell from -- without aid

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1 of this exhibit, that there was a spectral analysis taken on  
 2 this patient's blood gas showing an anomaly of apparently a  
 3 bicarbonate 29.1?  
 4 MR. LOGAR: Other than the witness's testimony?  
 5 THE COURT: Mr. Logar, please. If you have an  
 6 objection, direct it to me, would you, please.  
 7 Will you?  
 8 MR. LOGAR: I will.  
 9 THE COURT: All right. Mr. Peek, where are you going  
 10 with this? Is your point that the stuff that was patented and  
 11 what was --  
 12 MR. PEEK: The copyright is not anomaly detection.  
 13 It's just more stuff --  
 14 THE COURT: I get it.  
 15 BY MR. PEEK:  
 16 Q. Is there anything in there?  
 17 A. The end result.  
 18 Q. The end result. But we don't know what the -- was the  
 19 original to be able to look at the spectral analysis, as you  
 20 described it, to say this was a detection of an anomaly, other  
 21 than your testimony?  
 22 A. Correct.  
 23 Q. And there's nothing in the book that talks about that?  
 24 A. I'll look again.

53 (Pages 206 to 209)

Page 210

1 Q. Okay.

2 THE COURT: While we're taking this little break,

3 according to my review of the file, I do not have an Answer to

4 the complaint. Do you have a copy of the Answer?

5 MR. LOGAR: Your Honor, did you not get the documents

6 that were filed in federal court on remittitur?

7 THE COURT: "On removal"?

8 MR. PEEK: "On remittitur."

9 THE COURT: Oh, "on remittitur." Yeah, when they sent

10 them back?

11 MR. LOGAR: Yes.

12 THE COURT: Perhaps not, but do you have a copy of

13 the --

14 MR. LOGAR: We do.

15 MR. PEEK: And, Your Honor, they were filed and

16 captioned the United States District Court in the District of

17 Nevada.

18 THE COURT: Do you have a copy I could look at?

19 MR. PEEK: I've got one, Your Honor.

20 MR. LOGAR: It was unclear, when we were in federal,

21 when the remittitur would occur. I assumed that the file had

22 been sent back by now.

23 THE COURT: It may have. Who knows.

24 MR. LOGAR: But you don't have it?

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1 THE COURT: I don't have it, no.

2 MR. PEEK: We all assume that because Judge McKibben

3 ordered it that way.

4 THE COURT: Let me just see a copy. All I'm saying,

5 Mr. Peek, is, I think I know where you're going with this. And

6 ultimately, if we don't get finished, then I'm going to have to

7 ultimately declare some kind of a recess, and God knows when

8 we're going to come back. So I encourage you to use your

9 time --

10 MR. PEEK: Wisely? I'll move on, Your Honor.

11 BY MR. PEEK:

12 Q. In the brief moment you've had to look, you find

13 nothing in there about anomaly detection, do you?

14 A. No.

15 Q. And you were not the only founder of Computermate,

16 were you?

17 A. Yes, I was the original founder.

18 Q. Were you the only founder, sir?

19 A. Yes, I was the original founder.

20 Q. Were there any other individuals who -- well, for

21 example, who is Robert West?

22 A. I actually don't remember.

23 Q. And who is William Mannak?

24 A. He joined Computermate -- I don't remember the exact

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1 date.

2 Q. And was it in 1982?

3 A. It was like a year after -- I'm just --

4 Q. A year after you had what?

5 A. Started Computermate.

6 Q. When did you start Computermate?

7 A. I thought it was '81.

8 Q. So about a year later, he joined you.

9 And the source code that you wrote for blood gas

10 analysis, that was written in what language?

11 A. I believe RPN.

12 Q. RPN. And in what language were you writing anomaly

13 detection at eTrepid?

14 A. The anomaly detection at eTrepid already existed.

15 Q. It already existed?

16 A. Yes.

17 Q. Because you put it on the computers?

18 A. Yes.

19 Q. Okay. And what language was it that you put it on?

20 A. I think it was Visual C.

21 Q. Visual C. Not C++?

22 A. Not originally, that's correct.

23 Q. Now, were there engineers who wrote code onto the

24 anomaly detection that you had, at some time, put on the

Page 213

1 servers at eTrepid?

2 A. No.

3 Q. So, there were no -- none of the engineers in Zehang's

4 group, as he is director of engineering, did any additions

5 whatsoever in writing source code or writing code, either in

6 MET lab or C++, to the anomaly detection; is that right?

7 A. To my anomaly detection?

8 Q. That's right.

9 A. No.

10 Q. Was your anomaly detection on the source server?

11 A. No.

12 Q. Was it on the ESA server?

13 A. No.

14 Q. Was it in a raid box?

15 A. Had it ever been on a raid box?

16 Q. Uh-huh.

17 A. Possibly.

18 Q. Possibly. So -- and did you -- from time to time, as

19 the government was asking you to make additions or deletions or

20 improvements to the -- as you call your source code, did you

21 have to write additional code?

22 A. To the anomaly detection software?

23 Q. Yes.

24 A. No.

54 (Pages 210 to 213)



Page 214

1 Q. Okay. And when did you put it on -- when did you put  
2 the anomaly detection software onto the computers at eTrepid?  
3 A. Which computers?  
4 Q. The computers at eTrepid.  
5 A. July or August of 2003, I believe.  
6 Q. And which computer -- on which computer did you put  
7 it?  
8 A. The one in my office.  
9 Q. Okay. On this diagram here where we showed  
10 Dennis Montgomery in sort of the lower right, is that where --  
11 that's your desk station?  
12 A. Where?  
13 Q. Is that your desk? Show us -- actually, why don't you  
14 do it in green. Do it in green, please, sir.  
15 A. (Witness complies.)  
16 Q. So it's not in the warehouse?  
17 A. That's correct.  
18 Q. Okay. And do you have any other identifying  
19 characteristics of that, other than that computer that was in  
20 your office?  
21 A. I don't understand what you mean.  
22 Q. Is there anything, if I were to -- I want to make sure  
23 that I could go to the right computer. Is there just one  
24 computer in your office?

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1 A. And what time frame was that?  
2 Q. Let's say in December of 2005.  
3 A. I thought you said originally --  
4 Q. No, I wanted to know --  
5 A. You said originally 2003.  
6 Q. You put it there. You put it there, in 2003, on your  
7 computer in your office?  
8 A. That's correct.  
9 Q. Did it go anywhere after that?  
10 A. Yes.  
11 Q. Where did it go after that?  
12 A. Downstairs.  
13 Q. That's into the warehouse area?  
14 A. Yes.  
15 Q. Did you just take the entire box and put it -- take it  
16 down to the warehouse, or did you just take portions of it?  
17 A. I made just a copy of it.  
18 Q. And did you leave the original on your desktop or your  
19 computer in your office?  
20 A. No.  
21 Q. So you deleted that?  
22 A. Yes.  
23 Q. Okay. And then where did you put it after 2003, which  
24 computer?

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1 A. (Witness draws on diagram.)  
2 Q. Is there any identifying characteristic of that  
3 computer, location, type, manufacturer?  
4 A. Well, when I saw it last, it was still sitting there.  
5 Q. What's the manufacturer of it?  
6 A. It was a clone. There was no manufacturer of it.  
7 Q. It was a clone built by --  
8 A. eTrepid.  
9 Q. eTrepid. Is it the first computer as you walk into  
10 the warehouse on the left-hand side?  
11 A. From which direction?  
12 Q. As you're walking into it from the -- I don't know the  
13 directions here, but from the offices into the warehouse, would  
14 it be on the left-hand side?  
15 A. Yes.  
16 Q. That's where it's drawn on this drawing, isn't it?  
17 A. Well, that drawing didn't actually represent the way  
18 the computers were set up in the warehouse.  
19 Q. Okay.  
20 (Plaintiff's Exhibit 23 was marked for  
21 identification.)  
22 BY MR. PEEK:  
23 Q. Now, again with respect to Computermate, I think you  
24 said that that company, at some time, went out of business?

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1 A. I don't remember if it did or not or we sold it.  
2 Q. And did it merge into Barrett Laboratories?  
3 A. I don't think so.  
4 Q. And did Barrett Laboratories merge into 3Net?  
5 A. That is a possibility. I'm not certain.  
6 Q. Let me hand you what has been marked as Exhibit 23 and  
7 ask you to tell me whether or not you can identify whether or  
8 not that's anything you have seen before today.  
9 A. I can't read all of them, but I think I get the gist.  
10 Q. The gist is, these are the original documents filed by  
11 Computermate with the United States Copyright Office, are they  
12 not?  
13 A. I don't know if they are or not.  
14 Q. Well, you recognize your name there as  
15 Dennis Montgomery, do you not, as the author?  
16 A. Yes.  
17 Q. You recognize the TXu as corresponding to the claim  
18 that you made?  
19 A. I could look -- I'll trust you. Yes.  
20 MR. PEEK: You recognize Mr. Mannak as being somebody  
21 who was -- I'll offer it, then, Your Honor.  
22 THE COURT: What's the number?  
23 THE CLERK: 23.  
24 MR. PEEK: It's 23.

55 (Pages 214 to 217)

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1 THE COURT: Any objection?

2 MR. FLYNN: He has no foundation, Your Honor, for

3 authentication purposes.

4 THE COURT: I think it has enough that I'm going to

5 admit it. It's admitted.

6 (Plaintiff's Exhibit 23 was admitted into evidence.)

7 THE COURT: Where are we going with this? Are we back

8 to who really owned it?

9 MR. PEEK: Yes, Your Honor.

10 THE COURT: If he didn't own it, how could he sell it

11 to your clients? He shouldn't even be here.

12 MR. PEEK: That may very well be, Your Honor, as to

13 who should be here. What we maintain is, whatever he did with

14 blood gas has nothing to do with what happened -- or what was

15 actually developed at eTrepid.

16 THE COURT: Well, that, I understand.

17 MR. PEEK: There's two prongs.

18 THE COURT: Ownership has got a back side to it.

19 MR. PEEK: I understand it may be that I'm dealing

20 with Computermate or Barrett Laboratories or somebody else who

21 can come in and actually show us that their source code is the

22 same as ours and written in the same language.

23 MR. FLYNN: Your Honor, if that's the position, there

24 isn't an iota of evidence so far that they have presented that

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1 this anomaly detection software was developed, produced, worked

2 on, anything, by eTrepid Technologies other than

3 Mr. Montgomery. And the only state of the record is it derives

4 from the copyrights. There is nothing to the contrary.

5 MR. PEEK: Your Honor, that's untrue. Mr. Zchang

6 testified that he did anomaly detections in MET lab --

7 THE COURT: He did. He did.

8 MR. FLYNN: No, Your Honor -- well --

9 THE COURT: It's my recollection -- if I'm wrong, I

10 suspect that what I'm going to do is, I'm going to want to take

11 a look at the transcript. Maybe not. But I made some notes,

12 and I can tell you that, according to my notes -- hold on --

13 according to my notes, Dr. Sun -- well, I don't see it right

14 here, but that was my recollection. I'll look back at my

15 notes. I'm not going to take the time --

16 MR. FLYNN: Your Honor, I specifically asked --

17 THE COURT: Hold on right here.

18 Dr. Sun, according to my notes, he created software

19 for pattern recognition, motion detection, face recognition,

20 tracking the vehicles, and anomaly detection. I wrote it down.

21 MR. FLYNN: Yes, Your Honor. And then on cross, I

22 asked him if the anomaly detection work that he did had

23 anything to do with the anomaly detection work that

24 Mr. Montgomery did on the government contracts, and he said no.

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1 And I asked Mr. Montgomery, and he said what Dr. Sun did had

2 nothing to do with what he did on the government contract.

3 THE COURT: That could be. All right. Let's go ahead

4 and try to get through this.

5 MR. PEEK: Thank you, Your Honor. I'll try to move

6 on.

7 BY MR. PEEK:

8 Q. You then went to -- I think you said Barrett did

9 additional work -- well, first of all, let me sort of

10 backtrack. Is there a written assignment to you from

11 Computermate of these copyrights?

12 A. Yes.

13 Q. Where is that?

14 A. I believe I have it.

15 Q. Okay. So you could produce it to this Court at our

16 next hearing or during discovery?

17 A. I will surely look for it.

18 Q. Okay. And would that be -- would Mr. Mannak be the

19 one who assigned it?

20 A. I don't recall if it was or not.

21 Q. And where do you believe it exists today? Where is

22 it?

23 A. I don't know. I'd have to look for it.

24 Q. Now, you said you went to Barrett Laboratories. Did

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1 you, then, convey this same anomaly -- what you claim to be

2 your anomaly detection technology -- or, excuse me, copyright

3 to Barrett?

4 A. I don't know if it was -- I believe it was a

5 derivative and that work had continued on.

6 Q. Okay. And so you did additional work while you were

7 at Barrett?

8 A. Yes.

9 Q. And you had additional copyrights?

10 A. Yes.

11 Q. And those copies also were for this same derivative

12 work or blood gas analysis?

13 A. No, it covered many other areas.

14 Q. Covered other areas, but it was also anomaly

15 detection?

16 A. Yes.

17 Q. And did -- so, is there a written transfer of that --

18 all that work, the copyright for blood gas analysis, to

19 Barrett?

20 A. I believe so.

21 Q. You would have that as well?

22 A. I will sure look for it.

23 Q. And so then Barrett owned it after you joined Barrett

24 sometime in '85, you said?

56 (Pages 218 to 221)

Page 222

1 A. I believe I retained the rights out of Computermate to  
2 do with it what I chose, whether Barrett had it or not.

3 Q. Well, the copyrights that you did -- that you actually  
4 copyrighted at Barrett, were they for the blood gas analysis or  
5 derivatives thereof?

6 A. Would it contain that? Yes.

7 Q. Okay. So the copyrights that you did while you were  
8 at Barrett, who owns those?

9 A. I do.

10 Q. And how did you get them from Barrett?

11 A. They were assigned to me.

12 Q. And is there another written assignment of that?

13 A. I believe there is.

14 Q. You believe there is.

15 Now, are you aware that in order to make an assignment  
16 effective, it has to be at the copyright office?

17 A. I don't recall if it was or not.

18 Q. Have you transmitted these assignments to the  
19 copyright office?

20 A. I don't recall.

21 MR. FLYNN: Your Honor, that calls for a legal  
22 conclusion.

23 THE COURT: Well, he's asking if he's transmitted it  
24 to the copyright office. Are you talking about the question

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1 entity today, does it not?

2 A. I don't know if it does or not.

3 Q. You left it after a certain time?

4 A. Yes.

5 Q. Now, I think you also say that your -- you claim to  
6 have the right to the source code for pattern recognition, as  
7 well; is that correct?

8 A. Yes.

9 Q. Something that you developed while you were in  
10 Hollywood, acting as a consultant?

11 A. No.

12 Q. Okay. From '93 to '98, you worked as an consultant,  
13 and you said during that period of time, you did some work in  
14 Hollywood.

15 A. Yes.

16 Q. And it's while -- it's while doing that work in  
17 Hollywood that you then wrote pattern recognition source code?

18 A. No.

19 Q. When did you write that?

20 A. That was derivative work from the original work that I  
21 had done on the copyrights.

22 Q. Okay. Same thing with the blood gas analysis?

23 MR. FLYNN: Objection. I don't understand.

24 ///

///

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1 before that?

2 MR. FLYNN: I'm asking him if he is aware that that's  
3 what has to be done to make it legally effective.

4 THE COURT: And he said no, he's not, so he's answered  
5 that question. And then you asked him, had he transferred it,  
6 and I would assume --

7 MR. PEEK: Transmitted it in an assignment form to the  
8 copyright office.

9 THE COURT: Yeah, yeah. I would assume the answer is  
10 no, because he didn't know --

11 THE WITNESS: I don't know.

12 THE COURT: -- if that is the law or isn't the law. I  
13 don't know.

14 BY MR. PEEK:

15 Q. Would you agree with me, though, the copyrights, while  
16 you were at Barrett, on whatever you claim to be an anomaly  
17 detection that you developed at Barrett, were in the name of  
18 Barrett?

19 A. I don't recall if they were or not.

20 Q. Did the copyrights that you undertook to copyright  
21 while at Barrett get copyrighted in the name of Barrett or in  
22 your name?

23 A. I believe Barrett.

24 Q. And Barrett still exists in some other iteration of an

Page 225

1 BY MR. PEEK:

2 Q. What copyright was it that covered pattern  
3 recognition? Was it the blood gas analysis one?

4 A. I believe it was the one in Barrett Laboratories.

5 Q. And what's the name of it?

6 A. I -- I think it was the one for microbiology.

7 Q. The one for microbiology? Okay.

8 (Plaintiff's Exhibit 24 was marked for  
9 identification.)

10 BY MR. PEEK:

11 Q. Let me have you take a look at, again, a document from  
12 the United States Copyright Office. I'll represent to the  
13 Court and counsel that's where this came from.

14 It's Exhibit 24?

15 THE CLERK: That's correct.

16 BY MR. PEEK:

17 Q. Let me switch with you and give you the -- these  
18 are -- I will represent to you, these are the copyright numbers  
19 for the copyrights whose numbers correspond to the allegations  
20 in your counterclaim and in your federal court complaint.

21 A. Okay.

22 Q. Can you tell me which of these relate to pattern  
23 recognition, if any?

24 A. I did pattern recognition originally in the original

57 (Pages 222 to 225)

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1 HP computers. It was expanded greatly when I got into the  
2 Barrett Laboratories.  
3 Q. Okay. Then let's go back -- you still have the  
4 Computermate. Which one of those is related to pattern  
5 recognition?

6 A. The one dated -- the one -- 117-868, titled  
7 "Evapotranspiration Software."

8 Q. And this is entitled -- and you say "Computermate  
9 Source Code for Hewlett-Packard Model 86, Evapotranspiration  
10 Irrigation Software"; is that correct?

11 A. Yes.

12 Q. And the Hewlett-Packard Model 86, was that a computer,  
13 or was that one of those hand-held --

14 A. No.

15 Q. What was it?

16 A. I believe they were all computers, the 85, 86, and 87.

17 Q. They were before the IBM XT's?

18 A. PCs.

19 Q. The XT's that ran on the 88 -- or 8800 chip?

20 A. Yes.

21 Q. And you believe that this is an HP computer, the 86?

22 A. I believe it's a computer, yes.

23 Q. And certainly not what we know today or even  
24 comparable to the IBM that started all this, with the 8800 chip

Page 227

1 back in the mid-'80s?

2 A. Are you asking me --

3 Q. That's not the same thing, is it?

4 A. What do you mean, "the same thing"?

5 Q. Well, it's not with the motherboard, the hard drives,  
6 the chip?

7 A. It had a motherboard and a hard drive and a chip.

8 Q. And in what language did you write this code?

9 A. I think it was RPN. I'm not certain.

10 Q. You're not certain. Okay.

11 So then we have the blood gas analysis for anomaly  
12 detection and the Evapotranspiration Irrigation for pattern  
13 recognition; is that correct?

14 A. Yes.

15 Q. So the so-called copyrights at Barrett had nothing to  
16 do with either anomaly detection or pattern recognition; is  
17 that correct?

18 A. No.

19 Q. Okay. So which of those relates -- of the Barrett  
20 relate to pattern detection and anomaly detection -- pattern  
21 recognition and anomaly detection?

22 I'm trying, Your Honor.

23 A. The one that ends in 750 that speaks of microbiology  
24 and the one that ends in 009 that relates to anatomic

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1 pathology.

2 Q. Have you -- is there some record of what this source  
3 code would look like at the copyright office, and do you have  
4 an original copy of your filing showing the source code that  
5 you copyrighted?

6 A. I believe the source code is included with the  
7 copyright.

8 Q. So, at least those two anomaly detection copyrights  
9 that were in some -- excuse me. The anomaly and the pattern  
10 recognition were transferred to Barrett, and you continued to  
11 work on them and developed additional -- well, developed more  
12 work in pattern recognition and anomaly detection at Barrett;  
13 is that correct?

14 A. Yes.

15 Q. And is the pattern recognition source code -- was it  
16 also located first -- or loaded first on your office computer?

17 A. Um, I'm not certain.

18 Q. And when did you load it on that office -- your  
19 computer at the eTrepid office?

20 A. '03, I believe.

21 Q. What month in '03?

22 A. I'm thinking sometime in August, July, August.

23 Q. July and August of '03.

24 A. I'm tired. I think that was the time frame.

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1 Q. Okay. And then did you, after July, August of '03,  
2 write any additional source code, lines of code, to add to that  
3 original source code of pattern recognition that you loaded on  
4 your office computer in July and August?

5 A. For the detection?

6 Q. Yes.

7 A. No.

8 Q. And all your techs wrote pattern recognition. Did you  
9 write any code on that?

10 A. For the actual detection?

11 Q. The pattern recognition that you say is yours and the  
12 anomaly detection which you say is yours -- now, am I getting  
13 the phrases wrong?

14 A. What you're asking is, has the technology that's  
15 detecting the pattern or the anomaly been changed since it was  
16 at eTrepid? I think -- is that --

17 Q. Yes.

18 A. No.

19 Q. Thank you. So you haven't written any additional  
20 code, is that correct, to that?

21 A. For the actual detection?

22 Q. That's correct.

23 A. No.

24 Q. And are you telling this Court that the only software

58 (Pages 226 to 229)

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1 which was used to complete the government contracts was your  
 2 anomaly detection and your pattern recognition software?  
 3 A. I'm just looking at something.  
 4 Q. Please answer my question, sir.  
 5 A. I'm sorry. Go ahead.  
 6 Q. Are you telling this Court that the contracts that  
 7 were fulfilled by eTrepid were done -- were fulfilled solely  
 8 by your pattern recognition and your anomaly detection  
 9 software?  
 10 MR. FLYNN: Objection. Which contracts, Your Honor?  
 11 MR. PEEK: Any of the contracts.  
 12 THE COURT: Any of the contracts.  
 13 THE WITNESS: You mean ever?  
 14 BY MR. PEEK:  
 15 Q. Yes, solely by your source code for anomaly detection  
 16 and pattern recognition.  
 17 A. Yes.  
 18 Q. Okay. And which contract -- tell this Court which  
 19 contract was fulfilled using just your anomaly detection and  
 20 your pattern recognition.  
 21 A. The government agency that we --  
 22 Q. Oh, the government agency that we don't want to talk  
 23 about, is that the only one?  
 24 A. No.

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1 Q. Okay. Which other one where it was the sole product  
 2 or sole source code software used to fulfill the contract?  
 3 A. We had a contract with the Department of the Navy.  
 4 Q. Okay. And what was the nature of that contract?  
 5 A. Searching for an anomaly.  
 6 Q. Searching for an anomaly.  
 7 And was your software the only software used?  
 8 A. The one for detection?  
 9 Q. To fulfill that contract.  
 10 A. Yes.  
 11 Q. So none of the other eTrepid softwares were used  
 12 whatsoever?  
 13 A. That's correct.  
 14 Q. And did you tell this unnamed agency that it was  
 15 only -- that it was your software that was being used, as  
 16 opposed to eTrepid's?  
 17 A. I don't recall if I did or not.  
 18 Q. Was the contract with this unknown agency between you  
 19 or between eTrepid and the others?  
 20 A. eTrepid.  
 21 Q. Was the work running the software for detection  
 22 undertaken while you were at eTrepid?  
 23 A. Yes.  
 24 Q. And was the contract with the Navy, the contract with

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1 eTrepid?  
 2 A. Yes.  
 3 Q. And was it a contract and the work undertaken on that  
 4 contract all performed at eTrepid?  
 5 MR. FLYNN: Objection. Lacks foundation.  
 6 THE WITNESS: You have to ask the question again.  
 7 THE COURT: Ask the question. I mean, I understand  
 8 the question.  
 9 BY MR. PEEK:  
 10 Q. Was the performance under the contract with the Navy  
 11 all undertaken by eTrepid on eTrepid premises?  
 12 A. Yes.  
 13 Q. Now, is pattern recognition a part of digital  
 14 compression product?  
 15 A. No.  
 16 (Plaintiff's Exhibit 25 was marked for  
 17 identification.)  
 18 BY MR. PEEK:  
 19 Q. Did you, from time to time, prepare PowerPoint  
 20 presentations?  
 21 A. Yes.  
 22 Q. Let me have you take a look at what has been marked as  
 23 Exhibit 25 and ask you to take a moment and examine it and tell  
 24 me whether, after doing so, you can identify it as something

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1 you've seen before today.  
 2 THE CLERK: Just for the record, Your Honor,  
 3 Exhibit 24 was not offered.  
 4 MR. PEEK: I'll offer Exhibit 24.  
 5 Thank you, Mr. Clerk.  
 6 MR. FLYNN: No objection.  
 7 THE COURT: It's admitted.  
 8 This is 25?  
 9 MR. PEEK: Yes, Your Honor.  
 10 (Plaintiff's Exhibit 24 was admitted into evidence.)  
 11 THE WITNESS: Okay. I've looked at it.  
 12 BY MR. PEEK:  
 13 Q. And did you prepare it?  
 14 A. No.  
 15 Q. Who prepared this?  
 16 A. I don't know.  
 17 Q. Have you seen it before?  
 18 A. It looks familiar.  
 19 Q. So who, in March of 2001, would have been preparing a  
 20 PowerPoint presentation?  
 21 A. I can't recall.  
 22 Q. But you say this was not prepared by you?  
 23 A. I don't -- you asked me if I recall preparing it.  
 24 Q. Was it prepared by you?

59 (Pages 230 to 233)



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1 A. I don't recall preparing it.  
 2 Q. Okay. But you prepared PowerPoint presentations very  
 3 similar to this, did you not, sir?  
 4 A. I prepared PowerPoint presentations.  
 5 Q. And do you know ITVimage Xpress?  
 6 A. I think it was the name that the company was coming up  
 7 with to name their products.  
 8 Q. But you're the chief technology officer at this time,  
 9 were you not?  
 10 A. Yes.  
 11 Q. And it was your data compression that the company was  
 12 using pursuant to your contribution, was it not?  
 13 A. Yes.  
 14 Q. Okay. And you would have known what the business --  
 15 the technology business of the company was, would you not?  
 16 A. Yes.  
 17 Q. So you would have known about ITVdata Xpress, would  
 18 you not?  
 19 A. I don't recall seeing that particular --  
 20 Q. Okay. Well, let me --  
 21 A. -- acronym.  
 22 Q. Let me have you -- let's see. One, two -- these are  
 23 not numbered -- two, three, four, five, six -- on page 7 of  
 24 this --

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1 A. What is --  
 2 Q. The seventh page in.  
 3 A. What does it start with?  
 4 Q. It starts with "ITVdata Xpress; ITVdata," and it says  
 5 "supports SAN-Solutions based systems."  
 6 A. Okay. I can't tell you.  
 7 Q. Okay. This is talking about digital compression  
 8 products, is it not?  
 9 A. Yes.  
 10 Q. And it's talking, on at least that seventh page, about  
 11 pattern-matching features, is it not?  
 12 A. I don't see that.  
 13 THE COURT: Third down.  
 14 BY MR. PEEK:  
 15 Q. Third one down.  
 16 A. I must be on the wrong page, then.  
 17 MR. FLYNN: It's page 8.  
 18 THE WITNESS: I was on the sixth page.  
 19 MR. PEEK: Is it page 8, Counsel?  
 20 THE WITNESS: Okay. I got it. What's your question?  
 21 BY MR. PEEK:  
 22 Q. Pattern-matching features, that's pattern recognition,  
 23 is it not?  
 24 A. No.

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1 Q. It's not. Okay.  
 2 Now, 7 -- go to 8, 9, and then page 10.  
 3 A. Got it.  
 4 Q. Now, does it say there "ITVvideo has advanced features  
 5 like pattern and bit recognition"?  
 6 A. Yes.  
 7 Q. So eTreppid's technology, as of March 29, 2001, under  
 8 digital compression products, was at least saying that it had  
 9 pattern and bit recognition as far as digital compression, did  
 10 it not?  
 11 A. I see that there.  
 12 Q. And do you have any reason to --  
 13 A. I'm sorry.  
 14 Q. You don't agree with that, though, I would take it?  
 15 A. I don't recall at that time if it did or not.  
 16 Q. Well, you said you didn't put it on your computer  
 17 until sometime in 2003. This is 2001.  
 18 A. What's the question?  
 19 Q. So, the pattern recognition addressed here came out of  
 20 the digital compression product, did it not?  
 21 A. No.  
 22 Q. Oh, it did not. Okay.  
 23 But at least it was represented or part of this  
 24 PowerPoint presentation as a product that eTreppid had in March

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1 of 2001?  
 2 A. I don't recall if it did or not.  
 3 Q. Well, you see it here, do you not?  
 4 A. I just said I didn't make this document.  
 5 Q. I understand that. You don't have any reason to  
 6 believe that this is not a true and correct --  
 7 A. I don't know if it was true or incorrect.  
 8 MR. FLYNN: Your Honor, we need a correction on the  
 9 record. Mr. Peek pointed towards the green box and said that  
 10 what he's now discussing was put on Mr. Montgomery's computer  
 11 back at the time. The question was with regard to the green  
 12 box with regard to anomaly detection?  
 13 THE COURT: I think it was. I think it was.  
 14 MR. PEEK: He also said, Your Honor, that he put his  
 15 pattern recognition on the same computer on the same time frame  
 16 in 2003. I'll go back.  
 17 THE COURT: I don't remember that. Why don't you ask  
 18 him. I really don't remember.  
 19 MR. PEEK: I understand, Your Honor. It's late.  
 20 BY MR. PEEK:  
 21 Q. When did you put the pattern recognition source code  
 22 onto your computer?  
 23 A. I don't recall the exact time frame. I'm tired.  
 24 Q. Would it have been similar to the time you put the

60 (Pages 234 to 237)

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1 anomaly on?

2 A. It could have been.

3 Q. Would it have been any earlier than that?

4 A. I don't think so.

5 Q. Okay. So whenever you put -- whenever you testified  
6 you put the anomaly detection on would have been about the same  
7 time you put the pattern recognition source code technology on,  
8 again, in that little office, in that green block on Exhibit 1?

9 A. I'm not certain.

10 THE COURT: How much longer, Mr. Peek, do you think?

11 MR. PEEK: I'll try to move this along, Your Honor.

12 THE COURT: I know, but I'd like to have some idea how  
13 much longer.

14 MR. PEEK: I'll try to finish up, Your Honor, in a  
15 half an hour.

16 THE COURT: Then there's going to be redirect, I would  
17 assume?

18 MR. FLYNN: Yes, Your Honor.

19 THE COURT: So we're looking at 10 o'clock, maybe?  
20 It's getting kind of late. Let me just interrupt here because  
21 I want to ask a question, because I don't want to be sitting  
22 here, spending all this time and energy on this case -- we're  
23 looking at a case that actually is preempted by federal law.  
24 And what I'm trying to understand -- I haven't seen the order

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1 of remand. It's not in my file, anyway. And was this issue  
2 presented to Judge McKibben, and did Judge McKibben -- why did  
3 Judge McKibben send it back to state court if, in fact, it was  
4 preempted?

5 MR. PEEK: That was the argument that was made by  
6 Mr. Logar, Your Honor.

7 MR. FLYNN: I wasn't there. Mr. Logar will have to  
8 address it.

9 THE COURT: I directed the question to them, so let  
10 him answer it, and you can reply to it if you want to.

11 But do you have the order of remand? I don't.

12 THE CLERK: I don't have it.

13 THE COURT: All right. Mr. Logar?

14 MR. LOGAR: The case was originally filed by the  
15 plaintiffs in state court. We did a removal based on two  
16 issues: One was the diversity of citizenship parties, and  
17 subject matter jurisdiction. The federal court found that  
18 neither applied and remanded it back to the state court.

19 THE COURT: Well, are you telling me that McKibben  
20 found that the subject matter, i.e., the issue of copyright,  
21 was not preempted?

22 MR. LOGAR: No.

23 MR. PEEK: That's exactly what he found.

24 MR. LOGAR: No, that is not what he found.

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1 MR. PEEK: Your Honor --

2 MR. LOGAR: He followed the well-crafted complaint  
3 rule, okay?

4 MR. FLYNN: Your Honor, the issue that arose over in  
5 federal court was real simple. When they put in their original  
6 complaint that eTreppid Technologies was the California corp.,  
7 we removed it on that basis that they pled it was a California  
8 corp. They didn't realize they made a mistake. They told  
9 Judge McKibben we made a mistake, it's not a California corp.,  
10 it's a Nevada corp. Judge McKibben said I have no choice,  
11 there's no diversity.

12 In the interim, we filed a copyright claim --  
13 counterclaim. So the issue of preemption or nonpreemption has  
14 never been brought up or discussed or decided upon over in the  
15 federal court.

16 MR. PEEK: Your Honor, I was there --

17 THE COURT: Hold on. What I want to know is -- I  
18 mean, you know, I enjoy this job. I get paid to do this job.  
19 But on the other hand, it troubles me that this issue that  
20 where you're coming here and telling me, on February the 7th,  
21 that all of this stuff is preempted, that the first time I hear  
22 about that is when I'm handed this brief this evening. I don't  
23 think that's a very diplomatic way to handle this issue with  
24 this Court.

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1 MR. FLYNN: Your Honor, I agree with the Court.

2 THE COURT: I mean, we have -- if you are correct, if  
3 you are correct -- and I think the issue that really is whether  
4 or not the material we're talking about was copyrighted back in  
5 the '80s sometime. But if you're correct, then we've just  
6 wasted a whole lot of time, and frankly, I would think that if  
7 that was your position from way back when, I would have heard  
8 about this before now.

9 MR. FLYNN: Your Honor, Mr. Logar and Mr. Pulver are  
10 not copyright lawyers. We were just brought in. We only filed  
11 our appearances, Your Honor. You know, we had to do all of  
12 that by Federal Express. We literally have been doing this  
13 research in the last several days. We've been brought in at  
14 the 11th hour. An enormous amount of material is being dumped  
15 in the Court's lap, and it is --

16 MR. PEEK: Your Honor, could I address this?

17 THE COURT: You can if you want. I mean, I've already  
18 pretty much decided that what I'm going to do is, I'm going to  
19 go ahead and finish this matter. And I'm going to hear this  
20 matter and I'm going to make a decision in this matter, and  
21 then if the federal court says I'm preempted, that's fine.

22 MR. PEEK: I could address why they did what they did,  
23 but I won't.

24 THE COURT: It doesn't matter.

61 (Pages 238 to 241)

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1 MR. PEEK: Okay. Thank you.  
 2 THE COURT REPORTER: Your Honor, I just want to say,  
 3 for the record, I cannot go to 10 o'clock. Sorry.  
 4 THE COURT: You can't or you won't?  
 5 THE COURT REPORTER: I cannot.  
 6 THE COURT: How much longer do you think you can go?  
 7 I mean, if we're not going to go to the end, we might as well  
 8 stop right now.  
 9 THE COURT REPORTER: I'm very sorry, but the record  
 10 will suffer, and we've got a criminal calendar, as you know, at  
 11 8:30.  
 12 THE COURT: I sort of think I have to be here for  
 13 that, don't I?  
 14 THE COURT REPORTER: Yes, Your Honor.  
 15 MR. PEEK: Your Honor, could I ask Ms. Vohl to indulge  
 16 us just for a few more questions, because I want to make sure  
 17 that, one, the order that's currently there remains. And I  
 18 think the Court will do that. But I also want to ask for some  
 19 expansion of that. But may I have the Court's indulgence?  
 20 MR. FLYNN: I'm going to need to be heard on that,  
 21 Your Honor.  
 22 THE COURT: Well, I mean, we got a situation where  
 23 we've got a court reporter that's telling us she can't really  
 24 go much further. You know, there's not much -- I can't get out

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1 my whip and make her do that.  
 2 THE COURT REPORTER: You have a whip?  
 3 THE COURT: Yeah, I do.  
 4 MR. PEEK: Thanks, Cecilia.  
 5 MR. FLYNN: You seem way too kind, Judge.  
 6 MR. PEEK: I would just ask some indulgence, Your  
 7 Honor, for five minutes.  
 8 THE COURT: Can you hang in there for five?  
 9 THE COURT REPORTER: Yes.  
 10 THE COURT: All right. Let's go five.  
 11 BY MR. PEEK:  
 12 Q. Mr. Montgomery, you've heard Sloan's testimony about  
 13 conversations he had with you on January 3rd about why does it  
 14 appear that there are operations on the source server and the  
 15 ESA server, and you said he was cleaning up files.  
 16 A. I heard his testimony.  
 17 Q. Did you have that conversation with him?  
 18 A. No.  
 19 Q. That never occurred?  
 20 A. That's correct.  
 21 Q. So you were never cleaning up files on either the  
 22 source server or the ESA server?  
 23 A. Ever?  
 24 Q. In this time frame, from December through January --

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1 A. I might have.  
 2 Q. -- of '05.  
 3 So you might have cleaned them up?  
 4 A. Yeah.  
 5 Q. So when Mr. Venable was asking you questions about  
 6 what you were doing, you said you were cleaning up files.  
 7 A. No, no, I've never had a conversation with Mr. Venable  
 8 regarding this.  
 9 Q. And then you read the affidavit of Mr. Ball, have you  
 10 not?  
 11 A. Yes.  
 12 Q. And Mr. Ball talks about the fact that you took his  
 13 hard drive and his workstation on or around December 19th or  
 14 20th?  
 15 A. You'd have to show it to me.  
 16 Q. Well, let me just ask this question: Did you, on or  
 17 around December 19th or 20th, begin deleting certain eTreppid  
 18 source code files located on Barjinder Ball's hard drive?  
 19 A. No.  
 20 Q. Did you tell Barjinder Ball that you were deleting the  
 21 files on your -- his workstation for security reasons?  
 22 A. No.  
 23 Q. And did you tell Barjinder Ball that there remained  
 24 copies of those files that you were deleting on his server --

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1 or, excuse me, on his hard drive, on the source server, that he  
 2 would still be able to access?  
 3 A. He has a direct connection to the source server.  
 4 Q. Did you tell him that, sir --  
 5 A. No.  
 6 Q. -- that you were deleting files, that he could have  
 7 copies from the source server?  
 8 A. No.  
 9 Q. Okay. Did you delete any eTreppid source code files  
 10 on Venkata Kalluri's workstation in or about December of 2005?  
 11 A. No.  
 12 Q. Did you have a conversation with Mr. Kalluri about the  
 13 fact -- in December of 2005, about the fact that source codes  
 14 on his workstation had been deleted?  
 15 A. No.  
 16 Q. Did Mr. Kalluri ever ask you or did you ever explain  
 17 to Mr. Kalluri that you were backing up the source code at  
 18 eTreppid in or about late December of 2005?  
 19 A. I don't believe so.  
 20 Q. Well, did you or did you not, or you just don't  
 21 believe you did?  
 22 A. No, I didn't.  
 23 Q. Now, during the period of time between Christmas and  
 24 New Year's, if Mr. Kalluri needed an eTreppid source code file,

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1 that he would request it from you and then you would make a  
2 copy of it?

3 A. Not that I recall.

4 Q. So it could have happened?

5 A. He didn't make a request of me. No.

6 Q. So all of these individuals who gave affidavits, and  
7 Mr. Zehang who testified and Mr. Venable who testified, are  
8 lying about the fact that you deleted source code off of their  
9 workstations and off of the source server?

10 MR. FLYNN: Objection, Your Honor.

11 THE COURT: That's argumentative. That's right out of  
12 Law & Order.

13 MR. FLYNN: At that point, I think an objection would  
14 be best.

15 MR. PEEK: That objection, Your Honor, is that out of  
16 Law & Order?

17 THE COURT: No, the question is, the one where the  
18 guy -- I can't think of his name -- he asks that all the time.

19 MR. PEEK: Jack.

20 THE COURT: All right. We're -- that was --

21 MR. PEEK: That was the end of my five minutes. I  
22 have more questions, Your Honor. Let me ask one more.

23 BY MR. PEEK:

24 Q. If the Court were to reconvene with you at eTrepid's

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1 offices, would you be able to then show the Court and everybody  
2 else where all this code is that eTrepid says has been  
3 deleted?

4 MR. FLYNN: Objection. Your Honor, the Court cannot  
5 order that.

6 MR. PEEK: I think the Court can order that.

7 THE COURT: I don't know if I could order that we  
8 convene there, but I might be able to order that -- something  
9 that would accomplish the same result. I'm not sure.

10 MR. FLYNN: Objection. I do not believe, under the  
11 13th Amendment, since this person has been fired, you can make  
12 him go back and do anything.

13 MR. PEEK: The Court can convene and show us where --

14 THE COURT: We'll see, when that day comes, whether I  
15 can or not. I don't know, frankly, if I can or if I can't.

16 But I think I can order him to produce information that he may  
17 have, and whether that is easier accomplished in another forum,  
18 we'll just see, because I don't know the answer to that. And  
19 so the question was that if that were a possibility, could you  
20 do that?

21 BY MR. PEEK:

22 Q. Could you do that?

23 THE COURT: And I'll let him answer that question.

24 THE WITNESS: It might be possible, but considering

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1 the fact that they took all the drives out of the machines and  
2 moved them around, I would have no idea.

3 MR. PEEK: Your Honor, I still have the time that I  
4 said I would take on cross in terms of things like promissory  
5 notes and dilutions and the like, but I'll reserve that for  
6 another day.

7 THE COURT: I think what we're going to have to do,  
8 Counsel, is you're going to have to speak with Sheila, my  
9 administrative assistant, and set this matter for the first  
10 earliest time that we have available, which I don't really know  
11 myself, because I don't keep my own calendar, what that is.  
12 I've got a hearing that's similar to this on Thursday and  
13 Friday involving similar issues that I can't bump. Tomorrow, I  
14 have a criminal calendar in the morning, and I have a scheduled  
15 all afternoon tomorrow, don't I -- yeah, I'm told that I have a  
16 week-long jury trial on Monday. Is that right?

17 THE CLERK: I believe -- I spoke with the attorneys.  
18 They said three or four days.

19 THE COURT: All right. Well, the only thing I can say  
20 is the best thing to do is to talk to Sheila bright and early  
21 in the morning and find out what we've got available. I'll  
22 give you my earliest available time.

23 MR. PEEK: Can I tell the Court I have a horse show  
24 with my daughter that I'm attending on the 16th. I would ask

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1 the Court not to order me to continue this and miss my  
2 daughter's horse show.

3 THE COURT: Well, all I'm saying is, you're the people  
4 that want this thing done expeditiously. And I'm saying I'm  
5 willing to accommodate that, and I'm willing -- you know, in  
6 consideration of other counsel's calendars, as well, I'm  
7 willing to schedule it after hours. I'm willing to schedule  
8 it --

9 MR. PEEK: This Saturday?

10 THE COURT: This Saturday? I got my kids, but I could  
11 work around that if everybody else can work around it. That's  
12 the problem. And that includes staff, and it includes the  
13 court reporter. It includes all of the attorneys --

14 MR. PEEK: Could we go off the record, Your Honor, for  
15 Ms. Vohl, to have this discussion, or not?

16 THE COURT: Well, all right. Let's do this. Let's go  
17 ahead -- we'll be in the recess now until this hearing  
18 reconvenes.

19 MR. PEEK: The order is continued?

20 THE COURT: It is continued until such time as we can  
21 reset it.

22 And, Cecilia, you can go off the record right now,  
23 unless counsel wants to put something on record, and we can  
24 talk about scheduling and that sort of stuff.

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1 MR. FLYNN: I hate to impose on the court reporter,  
2 but I have an argument as to why the order cannot continue.  
3 It's not legally possible for this Court --

4 THE COURT: I haven't even gotten to that.

5 MR. FLYNN: -- to continue the current TRO.

6 THE COURT: Because of the 15 days?

7 MR. FLYNN: Because of the 15 days, because there is  
8 no record that has been created where a burden of proof has  
9 been met under all of the elements to sustain a temporary  
10 restraining order. There isn't even close to a record, as the  
11 original judge found, that would warrant the kind of language  
12 prepared by Counsel that is in the existing order.

13 Perhaps, Your Honor, there is some type of an order  
14 about data compression technology, but the Court, under the  
15 current state of the record, cannot possibly fashion an order  
16 on anomaly detection when there is absolutely no testimony that  
17 they even own it, let alone irreparable harm.

18 THE COURT: You said a couple of things. I don't  
19 think he was talking about the original judge. I talked to the  
20 original judge. He said, "I didn't decide anything." He said,  
21 "I just decided I wasn't going to hear it. I'm going to send  
22 it to somebody else." And he decided nothing on the merits. I  
23 talked to him today at noon.

24 MR. FLYNN: Your Honor, there is absolutely no showing

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1 in the record of irreparable harm. There's -- the worst that  
2 could possibly happen if this order were vacated, under the  
3 worst-case scenario, is that Mr. Montgomery would make a deal  
4 with the government or somebody, money would be created, and  
5 they'd have a claim for money. That's the worst-case scenario.  
6 So, how could equity and relief for irreparable harm on this  
7 record possibly exist?

8 THE COURT: Are you asking me a question?

9 MR. FLYNN: Your Honor, I'm saying that there is  
10 simply no record here. The Court cannot, on this record, issue  
11 a temporary restraining order for anomaly detection software  
12 that these lawyers incorporated into the order that this Court  
13 has signed, let alone the issue of restraining him from talking  
14 to anyone, talking to the United States Government, talking to  
15 the individuals he regularly communicates with on this subject.  
16 He communicated with one of them today.

17 MR. PEEK: That's in violation of the order, Your  
18 Honor.

19 MR. FLYNN: Your Honor specifically asked us, if the  
20 government comes in here and asserts the privilege, so we  
21 immediately called an individual who basically said on the  
22 telephone today, he'll have an attorney in this courtroom. So,  
23 whether it's a violation of the order --

24 THE COURT: I don't see the -- I'll also share with

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1 you, I talked with the United States Attorney today. And I was  
2 told that they would get back to me, they hadn't heard a word  
3 about it, don't know anything about it, didn't seem to be  
4 concerned about it. I gave them all the information that I  
5 had. And like I've been saying all day long, if they're going  
6 to show up, they show up, but they haven't shown up.

7 MR. FLYNN: In light of what I've heard today, I'm  
8 very confident that someone is going to show up very shortly.  
9 I doubt the U.S. Attorney's Office -- this would be an attorney  
10 who normally represents this agency on confidential  
11 information, from what we were told today.

12 THE COURT: Then let him show up.

13 MR. FLYNN: He'd probably be from Washington.

14 THE COURT: When we continue this thing, too, he can  
15 show up.

16 MR. FLYNN: Well, the original order, Your Honor,  
17 simply said they've not met their standard of proof. Of  
18 course, they had all these declarations, all these affidavits,  
19 most of which have now been shown to be extremely --

20 THE COURT: What original order? Judge Polaha's  
21 original order?

22 MR. FLYNN: Yes, the original order. "Plaintiff  
23 eTreppid's application for temporary restraining order is  
24 hereby denied without prejudice, and Plaintiff has not met the

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1 standard of proof as required by NRCP 65B and C at the meeting  
2 with the Court."

3 THE COURT: Well --

4 MR. FLYNN: And, if anything, Your Honor, not only has  
5 there been nothing more added, what has been brought into the  
6 court today has been completely brought into question.

7 THE COURT: All right. Here's what I'm going to do.  
8 We're going to continue this hearing until the time that will  
9 be set by counsel and my administrative assistant. I am going  
10 to make a determination on whether or not the TRO will  
11 continue. I will get you a written order no later than  
12 5 o'clock tomorrow, and I'll fax it to all the parties.

13 MR. FLYNN: And then we'll be able to comment on it,  
14 Your Honor, or submit --

15 MR. PEEK: Your Honor, until you make that decision,  
16 could the order that exists today remain in place?

17 THE COURT: Until 5 o'clock tomorrow.

18 MR. PEEK: Yes.

19 THE COURT: That's the order, until 5 o'clock  
20 tomorrow. So if I can't do it, I can't do it, but I think I  
21 can.

22 MR. PEEK: Your Honor, can the order remain in place  
23 until such time as the Court --

24 THE COURT: Well, I'll get the order done tomorrow.

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1 I'll get it done if I've got to stay up tonight to do it, but  
 2 I'll get it done.  
 3 And I do think that -- as I said, I had a conversation  
 4 with the judge. He told me he did not reach the merits on this  
 5 thing. And in my review of the material, I felt, when the TRO  
 6 was presented to me, that there was sufficient evidence to  
 7 support the TRO for the short period of time that we talked  
 8 about.

9 MR. FLYNN: Would Your Honor like a copy of this  
 10 order? If the clerk is willing, I'll make a copy so you'll  
 11 have it.

12 THE COURT: I've got Judge Polaha's order. I've got  
 13 the order. It was not clear to me when he said "without  
 14 prejudice," and so I suspected that there might be something  
 15 more to that, and I asked him.

16 So like I said, I felt that when I reviewed it, after  
 17 he declined to do it, perhaps without prejudice, perhaps on the  
 18 merits, perhaps not -- but when I reviewed it, I felt there was  
 19 enough for the TRO, and I granted it.

20 MR. FLYNN: Your Honor, I'd ask the Court, while I was  
 21 thinking, to seriously consider whether money damages would be  
 22 adequate and whether irreparable harm has been met on these  
 23 facts.

24 THE COURT: If your client can't afford to feed his

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1 family, how is he going to afford to pay damages?

2 MR. FLYNN: I don't think that's relevant in  
 3 determining whether or not a judgment ultimately could be  
 4 awarded against --

5 THE COURT: You're right. It's probably not relevant.

6 MR. FLYNN: -- Mr. Montgomery.

7 MR. PEEK: This is a trade secret, too, in terms of  
 8 irreparable harm.

9 MR. FLYNN: It's a trade secret only in terms of  
 10 Mr. Montgomery; otherwise, he wouldn't be here.

11 THE COURT: And this order is in effect until  
 12 5:00 p.m. tomorrow, February 8th. That's my decision.

13 MR. PEEK: And then you'll give us another one at that  
 14 time?

15 THE COURT: I'll give you another one at that time.  
 16 I'll tell you whether it's extended or whether it's not  
 17 extended, to what extent.

18 We're in recess.

19 MR. PEEK: Thank you, Your Honor.

20 (Proceedings concluded.)

21 -oOo-

22  
23  
24

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1 STATE OF NEVADA )

) ss.

2 COUNTY OF WASHOE )

3  
 4 I, CECILIA VOHL, Official Reporter of the Second  
 5 Judicial District Court of the State of Nevada, in and for  
 6 the County of Washoe, do hereby certify:

7 That as such reporter, I was present in Department  
 8 No. 9 of the above court on said date, time and hour, and I  
 9 then and there took verbatim stenotype notes of the  
 10 proceedings had and testimony given therein.

11 That the foregoing transcript is a full, true and  
 12 correct transcription of my said stenotype notes, so taken  
 13 as aforesaid. That the foregoing transcript was taken down  
 14 under my direction and control, and to the best of my  
 15 knowledge, skill and ability.

16 DATED: At Reno, Nevada, this day of  
 17 , 2006.

18  
 19 CECILIA VOHL, NV CCR #246

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